

**DEFENSE ADVISORY COMMITTEE  
ON INVESTIGATION,  
PROSECUTION, AND DEFENSE  
OF SEXUAL ASSAULT  
IN THE ARMED FORCES**



**THIRD ANNUAL REPORT**

**March 2019**



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**Defense Advisory Committee on  
Investigation, Prosecution, and  
Defense of Sexual Assault  
in the Armed Forces**



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**March 2019**





**THE DEFENSE ADVISORY COMMITTEE ON  
INVESTIGATION, PROSECUTION, AND DEFENSE OF  
SEXUAL ASSAULT IN THE ARMED FORCES**

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March 26, 2019

The Honorable James Inhofe  
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United States Senate  
Washington, DC 20510

The Honorable Jack Reed  
Ranking Member  
Committee on Armed Services  
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Washington, DC 20515

The Honorable Patrick M. Shanahan  
Acting Secretary of Defense  
1000 Defense Pentagon  
Washington, DC 20301

Dear Chairmen, Ranking Members, and Mr. Secretary:

We are pleased to submit the third annual report of the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (“2019 Annual Report”) in accordance with section 546 of the National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291). This report details the Committee’s activities over the past year related to the investigation, prosecution, and defense of sexual assault crimes in the military.

Since the submission of its March 2018 Annual Report, the Committee has held six public meetings during which it heard from 21 presenters and three members of the public on topics including sexual assault data collection and management, sexual assault investigation practices, and the effects of sexual assault investigations on accused Service members and victims. In addition, the Committee’s three working groups held 13 preparatory sessions during which members heard testimony from more than 50 presenters, including military prosecutors, defense counsel, investigators, victims’ counsel, program managers, victim services personnel, and an assistant United States Attorney.

In this report, the Committee provides detailed sexual assault case adjudication data and analysis for fiscal years 2015 to 2017 and makes 32 findings and 14 recommendations related to the following: commander decisions with respect to penetrative sexual assault complaints; documentation of command disposition decisions; fingerprint collection and submission processes for federal criminal history reporting; sexual assault data collection and management

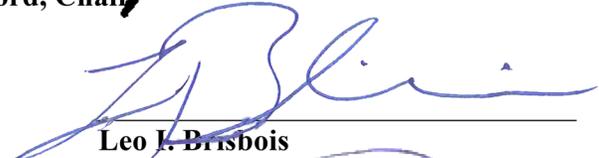
in accordance with the new Article 140a of the Uniform Code of Military Justice; and the Department's expedited transfer policy for victims of sexual assault. Most notably, on the basis of a first-of-its-kind review of a random sample of 164 penetrative sexual assault investigations closed in fiscal year 2017, the Committee found that military commanders' decisions whether to prefer charges or not to prefer charges in penetrative sexual assault cases were reasonable in the overwhelming majority (95%) of cases reviewed.

The members of the DAC-IPAD would like to express our sincere gratitude and appreciation for the opportunity to make use of our collective experience and expertise in this field to develop recommendations for improving the military's response to sexual misconduct within its ranks.

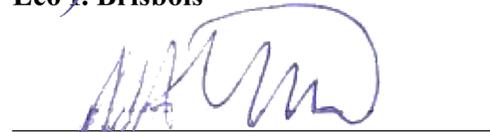
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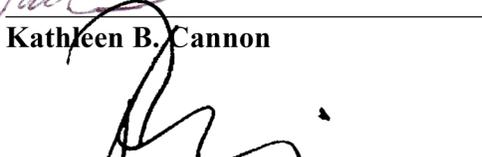
  
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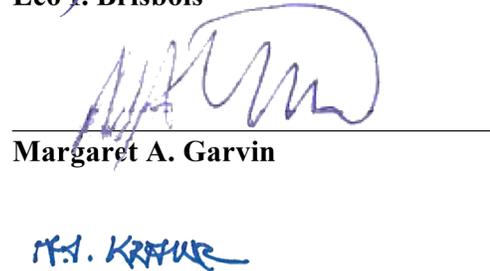
  
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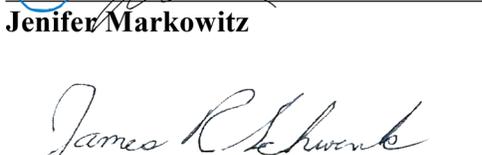
  
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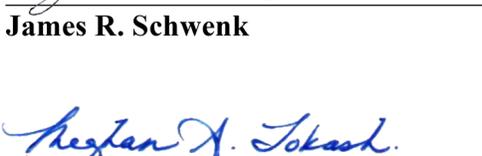
  
James P. Markey

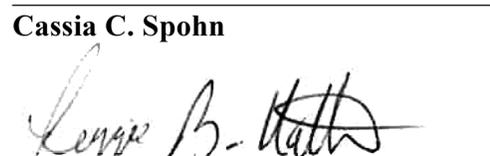
  
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## EXECUTIVE SUMMARY

In section 546 of the National Defense Authorization Act for Fiscal Year 2015, enacted on December 23, 2014, Congress directed the Secretary of Defense to establish the sixth congressionally mandated task force on sexual assault in the military since 2003: the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD).<sup>1</sup> Its authorizing legislation charges the Committee to execute three tasks over its five-year term:<sup>2</sup>

1. To advise the Secretary of Defense on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces;
2. To review, on an ongoing basis, cases involving allegations of sexual misconduct for purposes of providing advice to the Secretary of Defense; and
3. To submit an annual report to the Secretary of Defense and to the Committees on Armed Services of the Senate and the House of Representatives no later than March 30 of each year.

This is the third annual report of the DAC-IPAD: it describes the Committee's activities and the topics examined over the previous 12 months. The Committee held six public meetings between April 2018 and February 2019 during which it heard from 21 presenters, including three members of the public, on topics such as sexual assault data collection and management, sexual assault investigation practices, and the effects of sexual assault investigations on victims and accused Service members. In addition, the Committee's three working groups held 13 preparatory sessions during which members heard testimony from more than 50 presenters, including military prosecutors, defense counsel, investigators, victims' counsel, program managers, victim services personnel, and an assistant United States Attorney on topics including sexual assault investigation practices, the Department of Defense (DoD) expedited transfer policy, and sexual assault prosecution standards in the military and civilian jurisdictions.

The first chapter of this report discusses the Committee's initial findings and recommendations based on the Case Review Working Group's (CRWG) review and analysis of investigative case files. Since beginning the reviews in February 2018, the working group members have reviewed investigative case files for 164 individual penetrative sexual assault investigations randomly selected from more than 2,000 cases closed in fiscal year 2017 in which a Service member was accused of committing a penetrative sexual assault against an adult victim. Through the members' review of these 164 investigative case files and testimony received from judge advocates, investigators, and other subject matter experts, the Committee analyzed several topics, including the reasonableness of commanders' disposition decisions in cases involving penetrative sexual assault complaints, victim participation in the military justice process, investigator discretion, documentation of command disposition decisions, unfounded determinations, and subject fingerprint collection and submission to federal criminal databases. Based on the 164 case reviews, the Committee finds that commanders' decisions whether to prefer charges in penetrative sexual assault cases are reasonable in an overwhelming majority of cases. The Committee also finds that the investigative case files—and more specifically, the documentation of command disposition decisions within them—vary widely across the Services, are frequently incomplete, and often

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1 National Defense Authorization Act for Fiscal Year 2015, Pub. L. No. 113-291 [hereinafter FY15 NDAA], § 546, 128 Stat. 3374 (2014).

2 *Id.*

contain inaccurate or conflicting information with respect to case outcomes. This finding is highlighted by the Committee not only because it makes reviewing and analyzing the investigative case files more difficult, but also because it has implications for current and former Service members about whom erroneous information may be contained in federal criminal history databases that are routinely accessed by law enforcement, employers, and others. In next year's annual report, the Committee will be able to provide more comprehensive findings based on the working group's review of more than 2,000 cases closed in fiscal year 2017 (FY17).

The second chapter of this report describes the Committee's annual collection and analysis of military case adjudication statistical data for adult-victim sexual assault cases in which charges were preferred for penetrative or contact sexual assault offenses and in which final action on the case is complete.<sup>3</sup> The Committee has collected and recorded case documents including charge sheets, Article 32 reports, and Results of Trial forms for a total of 658 cases completed in fiscal year 2017, 768 cases completed in fiscal year 2016, and 780 cases completed in fiscal year 2015. This chapter and a detailed appendix provide case characteristics, disposition outcomes, and adjudication outcomes for these cases, including sex, Service branch, and pay grade of the subject; relationship of the victim to the subject; nature of the charges; forum; and case outcome. This chapter also includes a multivariate statistical analysis prepared by a professional criminologist that identifies patterns in the three-year data.

In Chapter 3, the Committee examines the new military criminal data collection and management standardization requirements enacted as part of the Military Justice Act of 2016. This act established a new Article 140a of the Uniform Code of Military Justice (UCMJ), which directs the Secretary of Defense to prescribe uniform standards and criteria across the Services for collection and analysis of military justice data and records by January 1, 2019. Having experienced some of the challenges resulting from the Services' inconsistent terminology and documentation regarding sexual assault case processing, the sexual assault advisory panel that preceded the DAC-IPAD—the Judicial Proceedings Panel (JPP)—developed a first-of-its-kind military sexual assault database, following the U.S. Sentencing Commission's methodology of centrally collecting and managing case documents to ensure the accuracy and reliability of reported data. The DAC-IPAD adopted and has continued the JPP's data collection efforts for sexual assault cases in the military for the past three years. Based on this experience, the Committee makes four recommendations—previously submitted to the Secretary of Defense in a letter dated September 13, 2018—emphasizing that the uniform standards and criteria developed to implement Article 140a, UCMJ, should reflect the following best practices: (1) all case data should be collected only from standardized source documents produced in the normal course of the military justice process; (2) document collection should be centralized within one organization in DoD; (3) a single electronic database should be developed for the storage and analysis of the standardized source documents; and (4) one independent team of trained professionals whose full-time job is to enter the data should be responsible for the data entry process. DoD provided a response to the Committee's letter on January 23, 2019. Citing concerns about the personnel and fiscal demands of a single system and the risk of failure, the senior deputy general counsel stated that a single system would not be considered at this time, but noted that the Department may reconsider the Committee's proposals in the future.

The fourth chapter of the report describes the Committee's examination of the DoD expedited transfer policy for victims of sexual assault. Over the course of the past year, the Policy Working Group (PWG) has continued to study and deliberate on the six specific expedited transfer-related issues identified in the DAC-IPAD's March

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3 For purposes of the DAC-IPAD's case review and data collection, the term "sexual assault" includes the following offenses under the Uniform Code of Military Justice: rape (Article 120(a)), sexual assault (Article 120(b)), aggravated sexual contact (Article 120(c)), abusive sexual contact (Article 120(d)), forcible sodomy (Article 125), and attempts of these offenses (Article 80).

2018 report, as well as one additional issue. In this report the Committee makes five recommendations related to expedited transfers. Among these is a recommendation to extend the expedited transfer option to Service members who make restricted reports, if certain requirements are met. The Committee also recommends that the Secretary of Defense study the possibility of allowing victims who have lost the ability to make a restricted report to request that further disclosure or investigation be restricted or terminated, with appropriate safeguards to ensure that victims are not pressured to do so and that there is not an overriding law enforcement need to continue the investigation. A victim may lose the ability to make a restricted report if a third party or the victim discloses the incident to someone in the chain of command without knowing that this triggers the opening of a criminal investigation. The Committee also recommends that sexual assault victims be given an option to attend a transitional care program at a medical facility, Wounded Warrior facility, or other facility to allow them sufficient time and resources to heal from the trauma of a sexual assault when needed. In addition, in order for the Services to continue to monitor the effectiveness of the expedited transfer policy, the Committee recommends that the Services track and report specified data elements related to expedited transfers.

Chapter 5 provides the Committee's initial observations in response to a provision in the National Defense Authorization Act for Fiscal Year 2019 (FY19 NDAA) that requires the Secretary of Defense, "acting through" the DAC-IPAD, to prepare and submit biennial reports to Congress detailing the number of instances in which an individual who reports an incident of sexual assault is either investigated for or receives adverse action as a result of misconduct he or she engaged in that is collateral to the investigation of the sex offense. In this chapter the Committee notes its uncertainty about what its role in the study should be, given the unclear statutory language and the absence of additional guidance from DoD. In light of a statutory due date for the first report of September 2019, the Committee also expresses concern that it currently does not have the resources necessary to undertake such a study. As initial suggested guidance for the study, the Committee proposes parameters for the study and highlights that it is currently recording instances of victim collateral misconduct in its review of fiscal year 2017 investigative case files to the extent that reviewers are able to discern such misconduct. The Committee members and staff plan to collaborate with the Services and DoD in the coming months to determine how they can most effectively assist in the study and report to Congress.

Finally, Chapter 6 provides background on three recommendations made by the JPP to the DAC-IPAD for continued study and assessment upon the JPP's termination. These recommendations relate to Articles 32, 33, and 34 of the UCMJ and involve the preliminary hearing process, command disposition guidance, and staff judge advocate advice to convening authorities, respectively. The JPP also recommended that the DAC-IPAD continue the JPP case adjudication data collection effort, which it has already done, as described in Chapter 2.

The DAC-IPAD members would like to express their sincere gratitude to the engaging, enthusiastic, and knowledgeable Service members and civilian presenters who shared their experiences and perspectives with the Committee over this past year, as well as the diligent Service representatives who attended meetings, guided information requests through their Services, and provided excellent support to the Committee. All imparted their wisdom, experience, and pride in service with great professionalism and grace.

The Committee wishes to dedicate this report to the late Keith Harrison, a beloved member of the DAC-IPAD and the Associate Dean and Professor of Law at Savannah Law School. Dean Harrison was a dear friend, colleague, leader, father, and husband, with a distinguished career of over 30 years in legal education as both a teacher and an administrator. He was especially proud of his service as a judge advocate in the U.S. Coast Guard before beginning his academic career. Dean Harrison's kindness, wisdom, and contagious enthusiasm will be deeply missed by all.



## SUMMARY OF DAC-IPAD FINDINGS, RECOMMENDATIONS, AND ASSESSMENTS<sup>4</sup>

### Command Disposition of Penetrative Sexual Assault Complaints

- **Finding 12:** Based on the review of 164 military investigative cases, the DAC-IPAD finds that commanders' dispositions of penetrative sexual assault complaints are reasonable in 95% of cases.

### Investigator Discretion

- **Finding 13:** Military investigators testified that they feel obligated to perform the same series of investigative tasks regardless of the facts of a particular case and that they have little discretion to determine which specific investigative actions would provide the most value.
- **Initial Assessment:** The Committee will continue to monitor this issue.

### Documentation of Command Disposition Decisions

*DAC-IPAD Recommendation 5:* In developing a uniform command action form in accordance with section 535 of the FY19 NDAA, the Secretary of Defense (and the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) should establish a standard set of options for documenting command disposition decisions and require the rationale for those decisions, including declinations to take action.

The Secretary of Defense (and the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) should ensure that the standard set of options for documenting command disposition decisions is based on recognized legal and investigatory terminology and standards that are uniformly defined across the Services and accurately reflect command action source documents.

*DAC-IPAD Recommendation 6:* The Secretary of Defense (and the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) should require that judge advocates or civilian attorneys employed by the Services in a similar capacity provide advice to commanders in completing command disposition/action reports in order to make certain that the documentation of that decision is accurate and complete.

- **Finding 14:** Accurate and uniform documentation of a commander's disposition decision, the reason for the decision, and any disciplinary action taken for violations of the Uniform Code of Military Justice

<sup>4</sup> DAC-IPAD Findings 1–11 and Recommendations 1-4 are included in the DEFENSE ADVISORY COMMITTEE ON INVESTIGATION, PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN THE ARMED FORCES ANNUAL REPORT 3–5 (Mar. 2018) [hereinafter DAC-IPAD 2018 ANNUAL REPORT], available at [https://dacipad.whs.mil/images/Public/08-Reports/DACIPAD\\_Report\\_02\\_Final\\_20180330\\_Web\\_Amended.pdf](https://dacipad.whs.mil/images/Public/08-Reports/DACIPAD_Report_02_Final_20180330_Web_Amended.pdf).

is essential to ensure that military criminal investigative agencies provide accurate and timely reports of crime data to federal law enforcement agencies and databases.

- **Finding 15:** The command disposition/action reports that are found in investigative files are often unclear, incomplete, inaccurate, and inconsistent within and across the Services.
- **Finding 16:** Command disposition/action documentation found in investigative case files sometimes conflicts with the actual action taken by the command.
- **Finding 17:** Command disposition/action reports that are found in investigative files include terminology inconsistent with military criminal investigative organization (MCIO) federal database reporting requirements; to meet these federal reporting requirements, investigators must therefore interpret the terms used, leading to inconsistent and inaccurate database reporting.
- **Finding 18:** MCIOs need the command disposition/action report to officially close their cases and make required federal reports to the Defense Incident-Based Reporting System (DIBRS) and federal criminal history databases.
- **Finding 19:** Judge advocates testified that they do not routinely assist commanders in completing command disposition/action reports.
- **Finding 20:** Command disposition/action reports often are not submitted to the MCIOs within five days of command action, as required by DoD policy.

#### **Definition and Application of the Term “Unfounded”**

- **Finding 21:** There is significant confusion among investigators, judge advocates, and commanders as to what the terms “probable cause” (reasonable grounds to believe) and “unfounded” (false or baseless) mean, when and by whom probable cause and unfounded determinations are made, and how they are documented throughout the investigative process.

#### **Fingerprint Collection and Submission Processes for Federal Criminal History Reporting**

***DAC-IPAD Recommendation 7: The Secretary of Defense (and the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) should provide uniform guidance to the Services regarding the submission of final disposition information to federal databases for sexual assault cases in which, after fingerprints have been submitted, the command took no action, or took action only for an offense other than sexual assault.***

- **Finding 22:** The standards, timing, and authority for collecting and submitting fingerprints to the federal database, making probable cause determinations, and submitting final disposition information to the federal database are unclear and not uniform across the Services.
- **Finding 23:** MCIO coordination with judge advocates on a probable cause determination for the submission of fingerprints often is not documented in the investigative file.
- **Finding 24:** Final dispositions being reported to the National Crime Information Center (NCIC) for sexual assault offenses are often inaccurate or misleading.

- **Finding 25:** DoD policy does not provide direction to the Services for cases in which the command elects not to prefer charges for a sexual assault offense, but fingerprints have already been submitted to the federal criminal history database as part of a sexual assault investigation.
- **Initial Assessment:** The Committee will continue to monitor the issues associated with collecting and submitting fingerprints and submitting final disposition information to the federal databases.

### Sexual Assault Data Collection and Management in the New Article 140a, Uniform Code of Military Justice

**DAC-IPAD Recommendation 8:** The uniform standards and criteria developed to implement Article 140a, UCMJ, should reflect the following best practices for case data collection:

- a. Collect all case data only from standardized source documents (legal and investigative documents) that are produced in the normal course of the military justice process, such as the initial report of investigation, the commander's report of disciplinary or administrative action, the charge sheet, the Article 32 report, and the Report of Result of Trial.
- b. Centralize document collection by mandating that all jurisdictions provide the same procedural documents to one military justice data office/organization within DoD.
- c. Develop one electronic database for the storage and analysis of standardized source documents, and locate that database in the centralized military justice data office/organization within DoD.
- d. Collect and analyze data quarterly to ensure that both historical data and analyses are as up-to-date as possible.
- e. Have data entered from source documents into the electronic database by one independent team of trained professionals whose full-time occupation is document analysis and data entry. This team should have expertise in the military justice process and in social science research methods, and should ensure that the data are audited at regular intervals.

**DAC-IPAD Recommendation 9:** The source documents referenced in DAC-IPAD Recommendation 8 should contain uniformly defined content covering all data elements that DoD decides to collect to meet the requirements of Articles 140a and 146, UCMJ.

**DAC-IPAD Recommendation 10:** The data produced pursuant to Article 140a, UCMJ, should serve as the primary source for the Military Justice Review Panel's periodic assessments of the military justice system, which are required by Article 146, UCMJ, and as the sole source of military justice data for all other organizations in DoD and for external entities.

***DAC-IPAD Recommendation 11:*** Article 140a, UCMJ, should be implemented so as to require collection of the following information with respect to allegations of both adult-victim and child-victim sexual offenses, within the meaning of Articles 120, 120b, and 125, UCMJ (10 U.S.C. §§ 920, 920b, and 925 (2016)):

- a. A summary of the initial complaint giving rise to a criminal investigation by a military criminal investigative organization concerning a military member who is subject to the UCMJ, and how the complaint became known to law enforcement;
- b. Whether an unrestricted report of sexual assault originated as a restricted report;
- c. Demographic data pertaining to each victim and accused, including race and sex;
- d. The nature of any relationship between the accused and the victim(s);
- e. The initial disposition decision under Rule for Court-Martial 306, including the decision to take no action, and the outcome of any administrative action, any disciplinary action, or any case in which one or more charges of sexual assault were preferred, through the completion of court-martial and appellate review;
- f. Whether a victim requested an expedited transfer or a transfer of the accused, and the result of that request;
- g. Whether a victim declined to participate at any point in the military justice process;
- h. Whether a defense counsel requested expert assistance on behalf of a military accused, whether those requests were approved by a convening authority or military judge, and whether the government availed itself of expert assistance; and
- i. The duration of each completed military criminal investigation, and any additional time taken to complete administrative or disciplinary action against the accused.

***DAC-IPAD Recommendation 12:*** The Services may retain their respective electronic case management systems for purposes of managing their military justice organizations, provided that

- a. The Services use the same uniform standards and definitions to refer to common procedures and substantive offenses in the Manual for Courts-Martial, as required by Article 140a; and
- b. The Services develop a plan to transition toward operating one uniform case management system across all of the Services, similar to the federal judiciary's Case Management/Electronic Court Filing (CM/ECF) system.

- **DAC-IPAD Assessment:** The Committee is very pleased that DoD is open in the future to further evaluation and consideration of its recommendation of a centralized, document-based military justice data collection system. The Committee will continue to collect and analyze sexual assault case adjudication data until its term ends and is hopeful that the Military Justice Review Panel required to be established in accordance with Article 146, UCMJ will continue and expand the sexual assault case adjudication data project.

### Expansion of Expedited Transfer to Restricted Reports

***DAC-IPAD Recommendation 13:*** The Secretary of Defense (and the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) expand the expedited transfer policy to include victims who file restricted reports of sexual assault. The victim's report would remain restricted and there would be no resulting investigation. The DAC-IPAD further recommends the following requirements:

- a. The decision authority in such cases should be an O-6 or flag officer at the Service headquarters organization in charge of military assignments, rather than the victim's commander.
- b. The victim's commander and senior enlisted leader, at both the gaining and losing installations, should be informed of the sexual assault and the fact that the victim has requested an expedited transfer—without being given the subject's identity or other facts of the case—thereby enabling them to appropriately advise the victim on career impacts of an expedited transfer request and ensure that the victim is receiving appropriate medical or mental health care.
- c. A sexual assault response coordinator, victim advocate, or special victims' counsel (SVC) / victims' legal counsel (VLC) must advise the victim of the potential consequences of filing a restricted report and requesting an expedited transfer, such as the subject not being held accountable for his or her actions and the absence of evidence should the victim later decide to unrestrict his or her report.

- **Finding 26:** 10 U.S.C § 673, the statutory basis for the expedited transfer policy, applies to Service members who are victims of sexual assault, not solely to Service member victims who file unrestricted reports. DoD policy limiting eligibility for expedited transfers to victims who file unrestricted reports is inconsistent with this law.
- **Finding 27:** Under current DoD policy, a sexual assault victim who files a restricted report and wants to transfer to a location closer to family and friends, or who wants to get away from the Service member who assaulted him or her, has no way to request a transfer that will help in the healing process except after filing an unrestricted report. Filing an unrestricted report to request an expedited transfer may lead to the victim's suffering the same negative consequences, such as the loss of privacy, that he or she sought to avoid by initially filing a restricted report.
- **Finding 28:** Filing an unrestricted report in order to request an expedited transfer triggers a full investigation of the allegation even if the victim does not want the case investigated or prosecuted. A sexual assault victim may elect not to participate in the investigation or prosecution of the case after unrestricting his or her report, but the case may proceed regardless of the victim's wishes.
- **Finding 29:** The Response Systems Panel, in its June 2014 report, recommended that the Secretaries of the Military Departments create a means by which a sexual assault victim who filed a restricted report could request an expedited transfer without making that report unrestricted.
  - a. In an October 21, 2015, Exception to Policy memo to the Secretaries of the Military Departments, the Acting Under Secretary of Defense for Personnel and Readiness allowed the Services to proceed with such an exception to the current expedited transfer policy set forth in DoDI 6495.02. This memo

expresses support for allowing sexual assault victims who file restricted reports to request expedited transfers, but does not change DoD policy to allow for it or provide the implementing procedures for how to accomplish this goal.

- b. In the three years since this memo was released, none of the Services has requested such an exception to policy, and it seems increasingly unlikely that they will do so without explicit direction from DoD.

### **Victims' Options Regarding Sexual Assault Reports Made by Third Parties**

*DAC-IPAD Recommendation 14: The Secretary of Defense (in consultation with the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) establish a working group to review whether victims should have the option to request that further disclosure or investigation of a sexual assault report be restricted in situations in which the member has lost the ability to file a restricted report, whether because a third party has reported the sexual assault or because the member has disclosed the assault to a member of the chain of command or to military law enforcement. The working group's goal should be to find a feasible solution that would, in appropriate circumstances, allow the victim to request that the investigation be terminated. The working group should consider under what circumstances, such as in the interests of justice and safety, a case may merit further investigation regardless of the victim's wishes; it should also consider whether existing safeguards are sufficient to ensure that victims are not improperly pressured by the subject, or by others, to request that the investigation be terminated. This working group should consider developing such a policy with the following requirements:*

- a. The victim be required to meet with an SVC or VLC before signing a statement requesting that the investigation be discontinued, so that the SVC or VLC can advise the victim of the potential consequences of closing the investigation.
- b. The investigative agent be required to obtain supervisory or MCIO headquarters-level approval to close a case in these circumstances.
- c. The MCIOs be aware of and take steps to mitigate a potential perception by third-party reporters that allegations are being ignored when they see that no investigation is taking place; such steps could include notifying the third-party reporter of the MCIO's decision to honor the victim's request.
- d. Cases in which the subject is in a position of authority over the victim be excluded from such a policy.
- e. If the MCIO terminates the investigation at the request of the victim, no adverse administrative or disciplinary action may be taken against the subject based solely on the reporting witness's allegation of sexual assault.

- **Finding 30:** Under current DoD sexual assault policy, a victim's communication with another person (e.g., roommate, friend, family member) does not, in and of itself, prevent the victim from later electing to make a restricted report. However, if the person to whom the victim confided is in the victim's chain of command—whether an officer or a noncommissioned officer—or is DoD law enforcement, the allegation

must be reported to the MCIO and is therefore treated as an unrestricted report, regardless of the victim's wishes or intent.

- **Finding 31:** DoD policy further states that if information about a sexual assault comes to a commander's attention, even if from a source other than the victim, that commander must immediately report the matter to an MCIO and an official investigation based on that independently acquired information may be initiated.
- **Finding 32:** DoD policy specifies that a victim's decision to decline to participate in an investigation should be honored; however, the victim cannot change a report from unrestricted to restricted, and the investigation may continue regardless of the victim's participation.
- **Finding 33:** Several commanders indicated in their testimony to the DAC-IPAD that the one change they would make to the system is to allow victims who have lost the ability to make a restricted report—whether because of third-party reports or because they were unaware of this consequence of reporting to a member of their chain of command—to restrict any further disclosure or investigation of the incident, if they so desire. Some representatives from the MCIOs testified in support of such a policy; others testified in opposition.
- **Finding 34:** Additional information is needed in order to fully evaluate the effects of such a policy change. Issues that should be considered include the impact on the accused and the unit of closing an investigation, potential liability for future sexual misconduct by the accused, and the potential loss of evidence of the alleged offense.

### Approval Standard and Purpose of the Expedited Transfer Policy

**DAC-IPAD Recommendation 15:** The Secretary of Defense (and the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) revise the DoD expedited transfer policy (and the policy governing the Coast Guard with respect to expedited transfers) to include the following points:

- a. The primary goal of the DoD expedited transfer policy is to act in the best interests of the victim. Commanders should focus on that goal when they make decisions regarding such requests.
- b. The single, overriding purpose of the expedited transfer policy is to assist in the victim's mental, physical, and emotional recovery from the trauma of sexual assault. This purpose statement should be followed by examples of reasons why a victim might request an expedited transfer and how such a transfer would assist in a victim's recovery (e.g., proximity to the subject or to the site of the assault at the current location, ostracism or retaliation at the current location, proximity to a support network of family or friends at the requested location, and the victim's desire for a fresh start following the assault).
- c. The requirement that a commander determine that a report be credible is not aligned with the core purpose of the expedited transfer policy. It should be eliminated, and instead an addition should be made to the criteria that commanders must consider in making a decision on an expedited transfer request: "any evidence that the victim's report is not credible."

***DAC-IPAD Recommendation 16: Congress increase the amount of time allotted to a commander to process an expedited transfer request from 72 hours to no more than five workdays.***

- **Finding 35:** The stated purposes of the current DoD expedited transfer policy are (1) to address situations in which a victim feels safe, but uncomfortable, and (2) to assist in the victim’s recovery by moving the victim to a new location where no one knows of the sexual assault. The expedited transfer policy does not address safety issues, which are the focus of other policies.
- **Finding 36:** Many Service presenters testified that the primary purpose of the expedited transfer program is to assist victims in their recovery.
- **Finding 37:** The standard that commanders must follow to reach a decision regarding an expedited transfer request is not clearly stated in DoD policy. According to DoD policy, a commander must find that a “credible report” has been made before approving an expedited transfer request, and the commander must consider a list of up to 10 additional criteria. However, DoD policy does not specify whether a commander should base his or her decision on what is in the best interests of the command, in the best interests of the victim, or both.
- **Finding 38:** Determining whether an expedited transfer request is based on a “credible report” is often problematic for commanders because they only have 72 hours to make such a determination, are prohibited from conducting their own investigation, and frequently have little information to consider beyond the victim’s report.

**Inclusion of Temporary, Permanent, Intra- and Inter-installation Transfers in the Expedited Transfer Policy**

- **DAC-IPAD Final Assessment:** Having spoken to numerous presenters from the Services and DoD—SVCs and VLCs, SARCs, SAPR personnel, assignments personnel, prosecutors, and defense counsel—the Committee has determined that with regard to this issue, the current expedited transfer policy is working for both victims and command.

**Expansion of the Expedited Transfer Policy to Civilian Spouses and Children of Service Members**

- **DAC-IPAD Final Assessment:** Following the DAC-IPAD’s initial review of this issue in its March 2018 Annual Report, Congress enacted a provision in the National Defense Authorization Act (NDAA) for Fiscal Year 2019 that expands the expedited transfer policy to include Service members whose dependents are victims of sexual assault by other Service members, thereby effectively resolving this issue. This section states:

The Secretary of Defense shall establish a policy to allow the transfer of a member of the Army, Navy, Air Force, or Marine Corps whose dependent is the victim of sexual assault perpetrated by a member of the Armed Forces who is not related to the victim.<sup>5</sup>

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<sup>5</sup> National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232 [hereinafter FY19 NDAA], § 536(b) (2019).

### Collection of Data Regarding Expedited Transfers

*DAC-IPAD Recommendation 17:* The Services track and report the following data in order to best evaluate the expedited transfer program:

- a. Data on the number of expedited transfer requests by victims; the grade and job title of the requester; the sex and race of the requester; the origin installation; whether the requester was represented by an SVC/VLC; the requested transfer locations; the actual transfer locations; whether the transfer was permanent or temporary; the grade and title of the decision maker and appeal authority, if applicable; the dates of the sexual assault report, transfer request, approval or disapproval decision and appeal decision, and transfer; and the disposition of the sexual assault case, if final.
  - b. Data on the number of accused transferred; the grade and job title of the accused; the sex and race of the accused; the origin installation; the transfer installation; the grade and title of the decision maker; the dates of the sexual assault report and transfer; whether the transfer was permanent or temporary; and the disposition of the sexual assault case, if final.
  - c. Data on victim participation in investigation/prosecution before and after an expedited transfer.
  - d. Data on the marital status (and/or number of dependents) of victims of sexual assault who request expedited transfers and accused Service members who are transferred under this program.
  - e. Data on the type of sexual assault offense (penetrative or contact) reported by victims requesting expedited transfers.
  - f. Data on Service retention rates for sexual assault victims who receive expedited transfers compared with sexual assault victims who do not receive expedited transfers and with other Service members of similar rank and years of service.
  - g. Data on the career progression for sexual assault victims who receive expedited transfers compared with sexual assault victims who do not receive expedited transfers and with other Service members of similar rank and years of service.
  - h. Data on victim satisfaction with the expedited transfer program.
  - i. Data on the expedited transfer request rate of Service members who make unrestricted reports of sexual assault.
- **Finding 39:** Currently, DoD and the Services track and report the number of expedited transfer requests (within an installation and between installations) made by Service member victims and the number denied and approved, as specifically required by Congress.
  - **Finding 40:** Currently, there is no consistent method of tracking other data related to victims who receive expedited transfers, such as career progression or retention in the military.

- **Finding 41:** Currently, there is no requirement that DoD and the Services track or report the number of subject transfers made in accordance with DoDI 6495.02.

**Transitional Assistance to Facilitate Recovery for Certain Service Members after a Sexual Assault**

***DAC-IPAD Recommendation 18: The Secretaries of the Military Departments (and the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) incorporate into policy, for those sexual assault victims who request it, an option to attend a transitional care program at a military medical facility, Wounded Warrior center, or other facility in order to allow those victims sufficient time and resources to heal from the trauma of sexual assault.***

- **Finding 42:** The expedited transfer policy and existing out-patient mental health, medical, and other resources that assist sexual assault victims in the recovery process are not sufficient for all sexual assault victims. Some victims may need extra time and resources to heal before resuming their regular duties.
- **Finding 43:** Existing arrangements, such as military medical facility in-patient programs or Wounded Warrior programs, provide effective treatment to those victims who require it prior to returning to their regular duties. However, these resources are not being sufficiently utilized by the Services to treat those sexual assault victims who require additional mental health or medical treatment beyond the out-patient care that may be available at their local installation.

# INTRODUCTION

## I. DAC-IPAD ESTABLISHMENT AND MISSION

The Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) was established by the Secretary of Defense in February 2016 pursuant to section 546 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015, as amended.<sup>6</sup> The mission of the DAC-IPAD is to advise the Secretary of Defense on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces.<sup>7</sup> In order to provide that advice, the Committee is directed to review, on an ongoing basis, cases involving allegations of sexual misconduct.<sup>8</sup>

In accordance with the authorizing statute and the Federal Advisory Committee Act of 1972 (FACA), the Department of Defense (DoD) filed the charter for the DAC-IPAD with the General Services Administration on February 18, 2016.<sup>9</sup> The swearing-in of 16 members and the first meeting of the DAC-IPAD was held on January 19, 2017.

The DAC-IPAD is required by its authorizing legislation to submit an annual report to the Secretary of Defense and to the Committees on Armed Services of the Senate and the House of Representatives, no later than March 30 of each year, describing the results of its activities.<sup>10</sup>

## II. COMPOSITION OF THE COMMITTEE

The Committee's authorizing legislation required the Secretary of Defense to select Committee members with experience in investigating, prosecuting, and defending against allegations of sexual assault offenses.<sup>11</sup> Active duty Service members are expressly prohibited from serving on the Committee.<sup>12</sup> In January 2017 the Secretary of Defense appointed to the DAC-IPAD 16 members, including its Chair, Martha S. Bashford. The members represent a broad range of perspectives and experience related to sexual assault both within and outside the military.<sup>13</sup>

The Committee members have spent decades working in their fields of expertise, which include

- Civilian sexual assault investigation and forensics

6 FY15 NDAA, *supra* note 1, § 546; National Defense Authorization Act for Fiscal Year 2016, Pub. L. No. 114-92, § 537, 129 Stat. 726, 817 (2015).

7 FY15 NDAA, *supra* note 1, § 546(c)(1).

8 *Id.* at § 546(c)(2).

9 Federal Advisory Committee Act of 1972, 5 U.S.C. App. §§ 1–16. *See* Appendix B, Charter of the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (Feb. 18, 2016; Renewed Feb. 16, 2018).

10 FY15 NDAA, *supra* note 1, § 546(d).

11 *Id.* at § 546.

12 *Id.*

13 *See* Appendix C, Committee Members, for a list and biographies of the DAC-IPAD members.

- Civilian and military sexual assault prosecution
- Civilian and military sexual assault defense
- Federal and state court systems
- Military command
- Criminology
- Academic disciplines and legal policy
- Crime victims' rights

Four members of the Committee retired from the military and two more served previously as judge advocates. Three of the members are sitting federal judges.

### **III. WORKING GROUPS**

In 2017 the DAC-IPAD established three working groups to support its mission: the Case Review Working Group, the Data Working Group, and the Policy Working Group.

The mission of the Case Review Working Group (CRWG) is to make recommendations to the Committee based on its review of cases involving allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct. The Case Review Working Group is chaired by retired Marine Corps Brigadier General James R. Schwenk, and comprises six additional members: Ms. Martha S. Bashford, Ms. Kathleen B. Cannon, Ms. Jennifer Gentile Long, Mr. James P. Markey, Dr. Cassia C. Spohn, and initially Judge Reggie B. Walton. In 2018 Judge Walton left the working group, and Ms. Meghan A. Tokash joined it.

The mission of the Data Working Group (DWG) is to make recommendations to the Committee based on its collection and analysis of case adjudication data from completed cases involving allegations of both penetrative sexual offenses (rape, forcible sodomy, and sexual assault) and contact sexual offenses (aggravated sexual contact, abusive sexual contact) for which charges were preferred. The Data Working Group is chaired by Dr. Cassia C. Spohn, and comprises two additional members: Mr. James P. Markey and Retired Chief Master Sergeant of the Air Force Rodney J. McKinley.

Finally, the mission of the Policy Working Group (PWG) is to make recommendations to the Committee based on its review of DoD policies, Military Department policies, and Uniform Code of Military Justice provisions applicable to allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct. The Policy Working Group is chaired by Chief Rodney J. McKinley and comprises four additional members: retired Army Major General Marcia M. Anderson, Ms. Margaret A. Garvin, Dr. Jenifer Markowitz, and General James R. Schwenk.

### **IV. PREVIOUS DAC-IPAD REPORTS**

#### **A. Initial Report – March 2017**

The DAC-IPAD held its first meeting on January 19, 2017—about two months before the statutory due date of March 30 for the Committee's annual report. In this initial report, the Committee reflected on its initial discussions, emphasizing the need for and importance of accurate, relevant data so that members can fully

understand the issues and make sound policy recommendations to the Secretary of Defense. The members expressed interest in analyzing key data points such as the impact of rank, race, and sexual orientation on charging decisions, conviction rates, and sentencing and agreed to continue the important data collection project developed by its predecessor panel, the Judicial Proceedings Panel (JPP).<sup>14</sup>

The Committee also discussed its directive to conduct case reviews. Recognizing the substantial privacy concerns that must be considered in reviewing investigative case files, particularly those involving children, the members agreed that they initially would concentrate exclusively on adult cases.<sup>15</sup> The Committee noted that the DAC-IPAD's authorizing legislation provides little guidance on how to conduct case reviews and acknowledged the need for continuing discussions about the scope and methodology of this process.<sup>16</sup>

The Committee outlined the development of its strategic plan in its Initial Report, which was released on March 30, 2017.<sup>17</sup>

## **B. Second Annual Report – March 2018**

The Committee held six public meetings in the 12 months preceding the release of its second annual report on March 30, 2018.<sup>18</sup> The Committee first received informational briefings on the mechanics of sexual assault investigation and prosecution in the military, the sexual assault case adjudication statistics collected and reported on by the JPP, and the sexual assault data collected and published annually by DoD's Sexual Assault Prevention and Response Office (SAPRO).<sup>19</sup> After completing its strategic plan, the Committee began its first substantive policy review by exploring the topics of expedited transfers and of the legal and sexual assault training received by convening authorities.<sup>20</sup>

In its second annual report, the Committee made 11 findings and 4 recommendations related to the Department's expedited transfer policy. The Committee's overall assessment was that the expedited transfer policy for sexual assault victims is an important sexual assault response initiative offered by the military and it strongly recommended the continuation and further improvement of the policy. It also recommended expanding the expedited transfer policy to include sexual assault victims who are active duty Service members covered by the Family Advocacy Program (FAP).

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- 14 See *Transcript of DAC-IPAD Public Meeting 238* (Jan. 19, 2017) (comment by Judge Reggie Walton, Committee member); *id.* at 238 (comment by Ms. Kathleen Cannon, Committee member); *id.* at 225–26 (comment by Major General (Ret.) Marcia Anderson, Committee member); *id.* at 230–31 (comment by Ms. Martha Bashford, Committee chair); *id.* at 231 (comment by Dean Keith Harrison, Committee member).
- 15 See *Transcript of DAC-IPAD Public Meeting 224* (Jan. 19, 2017) (comment by Ms. Meg Garvin, Committee member) (recommending that the DAC-IPAD review child cases and noting that there is a gap in data on children); *but see id.* at 264 (comment by Dr. Jenifer Markowitz, Committee member) (stating that she does not think the committee should review child sex abuse cases); *id.* at 266 (comment by Ms. Martha Bashford, Committee chair) (maintaining that for her the most important issue is ensuring that adults may serve in the military without getting sexually assaulted, but also noting that that doesn't mean the Committee can't ever look at children, domestic violence, or civilians).
- 16 See, e.g., *Transcript of DAC-IPAD Public Meeting 263–64, 271* (Jan. 19, 2017).
- 17 DEFENSE ADVISORY COMMITTEE ON INVESTIGATION, PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN THE ARMED FORCES INITIAL REPORT (Mar. 2017), available at [https://dacipad.whs.mil/images/Public/08-Reports/DACIPAD\\_Initial\\_Report\\_20170330\\_Final\\_Web.pdf](https://dacipad.whs.mil/images/Public/08-Reports/DACIPAD_Initial_Report_20170330_Final_Web.pdf).
- 18 See DAC-IPAD 2018 ANNUAL REPORT, *supra* note 4.
- 19 See generally *Transcript of DAC-IPAD Public Meeting* (Apr. 28, 2017); *Transcript of DAC-IPAD Public Meeting* (July 21, 2017).
- 20 See generally *Transcript of DAC-IPAD Public Meeting* (Oct. 19, 2017); *Transcript of DAC-IPAD Public Meeting* (Oct. 20, 2017).

Congress followed and expanded on this recommendation when it enacted a provision in the National Defense Authorization Act for Fiscal Year 2019 requiring the Secretary of Defense to extend the expedited transfer policy to Service members who are victims of sexual assault regardless of whether the case is handled by SAPRO or FAP.<sup>21</sup> The law also extends the expedited transfer policy to members who are victims of physical domestic violence committed by the spouse or intimate partner of the member regardless of whether the spouse or intimate partner is a member of the Armed Forces.<sup>22</sup> In addition, Service members whose dependent is sexually assaulted by a Service member not related to the victim are now eligible for expedited transfers.<sup>23</sup>

## V. THIRD ANNUAL DAC-IPAD REPORT – MARCH 2019

This report describes the Committee's activities and the topics examined over the previous 12 months. The Committee held six public meetings between April 2018 and February 2019 during which it heard from 21 presenters, including three members of the public, on topics such as sexual assault data collection and management, sexual assault investigation practices, and the effects of sexual assault investigations on accused Service members and victims.<sup>24</sup> In addition, the Committee's three working groups held 13 preparatory sessions during which members heard testimony from more than 50 presenters, including military prosecutors, defense counsel, investigators, victims' counsel, program managers, victim services personnel, and an assistant United States Attorney on topics including sexual assault investigation practices, the DoD expedited transfer policy, and sexual assault prosecution standards in civilian and military jurisdictions.

The Committee makes 32 findings and 14 recommendations in this report in the areas of commanders' disposition decisions with respect to penetrative sexual assault complaints, documentation of command disposition decisions, unfounded determinations, subject fingerprint collection and submission to federal criminal databases, Article 140a of the UCMJ regarding military justice data collection and management, and the DoD expedited transfer policy.

The first chapter of this report focuses on the outcome of the Committee members' review of a random sample of 164 of the 2,055 penetrative sexual assault investigative case files closed in FY17 involving Service member subjects and adult victims.<sup>25</sup> The members of the CRWG recorded descriptive data from each case and assessed the reasonableness of the command disposition decisions based on the evidence available in the files and the members' professional experience.

Chapter 2 of the report details the Committee's collection and analysis of case adjudication data for completed penetrative and contact sexual assault cases in which charges were preferred, covering fiscal years 2015 through 2017. Chapter 3 provides the Committee's recommendations and rationale regarding the implementation of the new Article 140a, UCMJ, which requires uniform data collection and management for military justice cases. These recommendations were initially submitted to the Secretary of Defense by the Committee on September 13, 2019, in order to be considered before the deadline for the guidance of January 1, 2019. The Committee Chair received a response from the DoD Office of General Counsel along with the Department's uniform

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21 FY19 NDAA, *supra* note 5, § 536.

22 *Id.* at § 536.

23 *Id.* at § 536.

24 See Appendix N, DAC-IPAD Public Meetings, Preparatory Sessions, and Presenters.

25 See Chapter 1, Section II on Case Review Methodology for a more detailed discussion of the cases selected for review.

guidance on January 23, 2019. Both letters are discussed in the chapter and included as Appendixes J and K to the report.

The Committee's final assessment and recommendations related to the DoD expedited transfer policy are discussed in Chapter 4. Finally, in Chapters 5 and 6, the report identifies and makes initial comments on several additional topics that the Committee has been requested to explore by DoD and Congress, including collateral misconduct engaged in by victims of sexual assault and Articles 32, 33, and 34 of the UCMJ.



# CHAPTER 1. SEXUAL ASSAULT INVESTIGATIVE CASE FILE REVIEW – INITIAL ASSESSMENT

## I. INTRODUCTION

### A. Case File Review Mandate and Scope of Review

Congress directed the DAC-IPAD to “review, on an ongoing basis, cases involving allegations of sexual misconduct”—including allegations of rape, forcible sodomy, and sexual assault—involving members of the Armed Forces, in order to advise the Secretary of Defense regarding the handling of those cases in the military justice system.<sup>26</sup> In accordance with this statutory mandate, the Committee formed and tasked a Case Review Working Group (CRWG), composed of seven Committee members, to individually review military sexual assault cases. The CRWG is chaired by retired Marine Corps Brigadier General James R. Schwenk. The other members of the working group are Ms. Martha S. Bashford (the DAC-IPAD Chair), Ms. Kathleen B. Cannon, Ms. Jennifer Gentile Long, Mr. James P. Markey, Dr. Cassia C. Spohn, and Ms. Meghan A. Tokash.

Neither the DAC-IPAD’s authorizing statute nor its charter specified the scope of or methodology for the Committee’s case review requirement. Recognizing that none of the previous military sexual assault panels evaluated military sexual assault cases at the investigative stage, the Committee decided to focus its case review on the period from the initial report of a penetrative sexual assault to military law enforcement through the decision of the commander whether to prefer charges for a penetrative sexual assault, thereby initiating a criminal justice proceeding.<sup>27</sup>

In October 2017 the Committee submitted a request for information (RFI) to the Services’ military criminal investigative organizations (MCIOs).<sup>28</sup> In this request the Committee asked for the Services to provide the total number of sexual assault investigations closed in fiscal year 2017 as well as case-by-case investigative data, including the case dispositions for all cases that met four criteria: (1) closed in fiscal year 2017 (2) involving a complaint of penetrative sexual assault (3) made by an adult victim (4) against an active duty military subject.<sup>29</sup>

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26 FY15 NDAA, *supra* note 1, § 546 (c)(2).

27 U.S. Dep’t of Def., Memorandum from the Secretary of Defense on Withholding Initial Disposition Authority Under the Uniform Code of Military Justice in Certain Sexual Assault Cases (Apr. 20, 2012).

28 See DAC-IPAD RFI Set 5 (Jun 29, 2017), available at [https://dacipad.whs.mil/images/Public/07-RFIs/DACIPAD\\_RFI\\_Set5\\_20171030\\_Web.pdf](https://dacipad.whs.mil/images/Public/07-RFIs/DACIPAD_RFI_Set5_20171030_Web.pdf). For purposes of this report, MCIOs are the U.S. Army Criminal Investigative Command (CID), Naval Criminal Investigative Service (NCIS), Air Force Office of Special Investigations (AFOSI), and Coast Guard Investigative Services (CGIS). A case is considered “closed,” in this context, after a completed MCIO investigation has been submitted to a commander to make an initial disposition decision and any action taken by the convening authority is complete and documentation of the outcome has been provided to the MCIO. *Id.* The Committee defined a “penetrative sexual assault” as a complaint of rape or sexual assault, in violation of Article 120 of the Uniform Code of Military Justice (UCMJ); forcible sodomy, in violation of Article 125 of the UCMJ; and any attempt to commit such offenses. *Id.*; see also *Transcript of DAC-IPAD Public Meeting 294* (Oct. 20, 2017) (presentation by Member James Schwenk and Committee discussion); PowerPoint presentation by the Case Review Working Group, Initial Case Review Plan (Oct. 20, 2017). 10 U.S.C. § 920(b) (UCMJ, Art. 120(b)) defines a child as an individual who is under the age of 16; therefore, the Committee defined an adult victim as a victim over the age of 16. See DAC-IPAD 2018 ANNUAL REPORT, *supra* note 4, at 15–22.

29 The dates of fiscal year 2017 are from October 1, 2016, to September 30, 2017. Disposition options are outlined in Rule for Courts-Martial (R.C.M.) 306(c) of the Manual for Courts-Martial; they include no action, administrative action, non-judicial punishment, and preferral of charges. The

The Service MCIO responses indicated that while more than 6,000 sexual assault cases were closed by the MCIOs in FY17, only about 2,000 of those cases—a third—involved penetrative sexual assault complaints made against a Service member by an adult victim.<sup>30</sup> The individual case data provided by the MCIOs also revealed that a majority of the penetrative sexual assault investigations closed in FY17 did not result in the preferral of criminal charges for a penetrative sexual assault.<sup>31</sup>

## **B. Objectives**

The Committee outlined its objectives and plan for the case review project in detail in its March 2018 report.<sup>32</sup> After regularly reviewing individual investigative case files over the past year and gaining a hands-on perspective regarding military sexual assault cases as documented in military investigative case files, the Committee identified the following objectives for its case review project:

- Assess the reasonableness of case disposition decisions in the military.
- Compile descriptive case data regarding the facts of the cases reviewed.
- Examine investigative files for issues involving the discretion afforded to military investigators and the duration of investigations.
- Review practices for documenting a commander's disposition decision in penetrative sexual assault cases in which a Service member is the subject.
- Review MCIO practices for submitting fingerprints and case disposition information to federal databases and for documenting cases as unfounded.

A sixth objective outlined in last year's report, examining predictive factors for case outcomes, is not addressed in this report. That objective will require an analysis of the full set of 2,055 cases from FY17, which is not yet complete; it will therefore be addressed in a future report.

The Committee's initial case review assessments, findings, and recommendations outlined in this chapter were derived from members' review and analysis of 164 individual penetrative sexual assault investigative cases closed in FY17.<sup>33</sup> The report was further informed by the testimony of civilian and military investigators, military prosecutors, military defense counsel, an assistant United States attorney, and Federal Bureau of Investigation (FBI) analysts received by the Committee and its working group in March, July, August, and October of 2018, and by over 25 hours of Committee and working group deliberations on these issues.

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Committee decided that a case would be categorized as "action taken" only if the action was for a reported penetrative sexual assault, and not for a lesser included or other criminal offense, including collateral misconduct. "No action taken" means that the penetrative sexual assault report was thoroughly investigated by the relevant Service's MCIO, a report of the investigation was completed and submitted to the commander, and the commander decided against taking any action, whether administrative, non-judicial, or judicial, for the penetrative sexual assault.

30 See Appendix H, Aggregated Service Responses to DAC-IPAD RFI Sets 3, 4, and 5 (Oct. 30, 2017), at H-16.

31 *Id.*

32 DAC-IPAD 2018 ANNUAL REPORT, *supra* note 4, at 25.

33 See Section II on Case Review Methodology for a more detailed discussion of the cases selected for review.

## II. CASE REVIEW METHODOLOGY

### A. Case Data and Files Provided by the MCIOs

In its October 2017 RFI regarding military sexual assault investigations closed in FY17, the DAC-IPAD asked for specific descriptive details about each case, including the Service branch of the subject(s), status of the victim as either civilian or Service member, date the case was closed, type of penetrative offense reported, and the case disposition, both as reflected in the Service MCIO case management systems and as submitted by the MCIOs for FBI crime data reporting purposes.<sup>34</sup>

Once the Committee received the requested information from the MCIOs, the staff thoroughly reviewed the lists of cases provided by each of the Services and found that some were outside the scope of the data request, such as cases involving victims under the age of 16 or non-Service member subjects. These cases were eliminated before the data were evaluated. To further streamline the Committee's review and avoid possible duplication of cases, the staff also excluded any cases in which the subject was from a different branch of Service than the MCIO; cases in which the subject was a member of the Reserves or National Guard, or had retired or separated from the Service prior to the initiation of the investigation; and cases in which the Service member subject was prosecuted by civilian authorities.<sup>35</sup> If there were multiple subjects in an investigation, the Committee counted the investigation with respect to each subject as a separate "case" for purposes of the Committee's review.<sup>36</sup> The resulting list comprised 2,055 cases closed in FY17 in which a Service member was investigated for a penetrative sexual assault against an adult victim.

Next, the cases were sorted by Service of the subject and by the disposition of the case. The DAC-IPAD RFI requested that the MCIOs provide the case disposition for each of the penetrative sexual assault offenses identified. However, once the Committee members began reviewing the case files, the reviewers found that the MCIOs' categorization by case disposition of the 2,055 penetrative sexual assault cases was not always specific to the penetrative sexual assault offense and, in some cases, may have represented action taken for other non-sexual offenses that were investigated in conjunction with the penetrative sexual assault, such as adultery, fraternization, or underage drinking. Since the focus of the DAC-IPAD's review is exclusively on whether an investigation resulted in prefferal of criminal charges or other adverse action specifically for a penetrative sexual assault, the DAC-IPAD will provide case disposition data specifically for the penetrative sexual assault offense in all 2,055 cases once the individual case reviews are complete. The table below, which is based on the MCIOs' responses to the RFI and not on the DAC-IPAD's own categorization of case disposition, illustrates the number of cases in which charges were preferred or not preferred for a penetrative sexual assault (PSA) offense.

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34 DAC-IPAD RFI Set 5 (Oct. 30, 2017). In DAC-IPAD RFI Set 5, the MCIOs were requested to provide the disposition of the penetrative sexual assault case, including whether no action was taken and/or the case was unfounded, for all FY17 sexual assault investigations for a penetrative sexual assault with a military subject and adult victim closed between October 1, 2016, and September 30, 2017 (regardless of the date the allegation was made or the investigation opened). *See* Appendix E, DAC-IPAD Requests for Information Sets 1–10.

35 The staff excluded all cases in which the MCIOs designated the subject as retired in the case lists provided; however, reviewers realized during the course of the case reviews that some of the remaining investigations also included Service members who were retired at the time of the investigation. The CRWG members determined that they would still review these cases, since the case files were provided to the Committee. The retired status of these subjects is noted in the DAC-IPAD's collected data.

36 In their case lists, the MCIOs included a separate entry for each subject in an investigation. Therefore, if one investigation had multiple subjects, the case was indicated multiple times on the case list for each separate subject. During the course of the reviews, however, the reviewers realized that some cases that had not been designated as multi-subject by the MCIOs in the case lists also involved multiple subjects; the number of cases for review was revised accordingly.

**PENETRATIVE SEXUAL ASSAULT CASES CLOSED IN FY 2017 INVOLVING ADULT VICTIMS  
AND SERVICE MEMBER SUBJECTS (N=2,055)<sup>37</sup>**

Military Service of Subject	Cases with Charges Preferred for PSA Offense (n=408)		Cases with No Charges Preferred for PSA Offense (n=1,647)		Total PSA Cases Closed in FY 2017
	Count	Percentage	Count	Percentage	
Army	148	16%	766	84%	914
Marine Corps	66	23%	223	77%	289
Navy	65	16%	335	84%	400
Air Force	117	28%	306	72%	423
Coast Guard	12	41%	17	59%	29

The Committee members were particularly struck that an average of 80% of the 2,055 cases involving reports of rape, sexual assault, and forcible sodomy that were closed in FY17 did not result in charges being preferred for those offenses. The Committee sought to examine these investigative case files first to learn more about the specific facts of the cases, the evidence collected, and the decision-making process of the command in choosing not to prefer charges (including any written legal advice received, if available).

The Committee decided that its working group members would individually review a random sample of case files selected from the 2,055-case list, proportionately weighted by case disposition, as designated by the MCIOs, and by the Service of the subject. With guidance from the DoD Office of Inspector General, the staff identified a random sample of cases for the Committee members to review; the random sample was generated from the MCIO case lists utilizing the random number function in Microsoft Excel, which identified 184 cases for inclusion in the sample stratified by Service and disposition category. These cases were each classified by the MCIOs as having one of the following dispositions: preferal of charges, administrative action, non-judicial punishment, or no action taken.<sup>38</sup>

To establish a baseline against which to compare facts and evidence in the cases in which no action was taken for the penetrative sexual assault, the Committee also reviewed the cases from the random sample in which charges were preferred. Out of the random sample of 184 cases, the combined cases with dispositions of no action and preferal of charges was 152. The remaining 32 cases with dispositions of non-judicial punishment or administrative action were set aside to be reviewed in a later report.

When the Committee members began reviewing and documenting case information from the investigative files, they found that some case files involved multiple subjects that were not separately identified in the case lists provided by the MCIOs. Since each “case” is composed of a single subject-victim pair, the discovery of additional subjects and victims during case reviews increased the number of random sample cases from 152 to 164. Of

37 The cases reported in this table comprise MCIO investigations of all penetrative sexual assault complaints made by adult victims against Service member subjects closed in FY17, including those investigations in which a judge advocate determined that no probable cause existed for the penetrative sexual assault. Case disposition classifications were provided to the DAC-IPAD by the Service MCIOs in DAC-IPAD RFI Set 5. See Appendix E, DAC-IPAD Requests for Information Sets 1–10, and Appendix H, Aggregated Service Responses to DAC-IPAD RFI Sets 3, 4, and 5.

38 The distribution of dispositions of the 184 cases was as follows: preferal of charges 37 (20%), administrative action 19 (10%), non-judicial punishment 13 (7%), and no action taken 115 (63%).

the 164 cases reviewed, 42 were cases in which charges were preferred for the penetrative sexual assault and 122 were cases in which no action was taken against the subject for the penetrative sexual assault offense. In the cases in which no action was taken for the penetrative sexual assault, it is possible that some other adverse action was taken against the subject for offenses other than the penetrative sexual assault.

For the random sample cases, the Committee ensured that the dispositions in the “preferred” and “no action” categories reflected the disposition of the penetrative sexual assault offense specifically. When a case file indicated that the disposition action was for an offense other than the penetrative sexual assault, the case was replaced with another randomly selected case file from the universe of 2,055 penetrative sexual assault cases. This process was repeated until a case file was identified that reflected the disposition of the penetrative sexual assault.

**PENETRATIVE SEXUAL ASSAULT CASES CLOSED IN FY 2017 INVOLVING ADULT VICTIMS  
AND SERVICE MEMBER SUBJECTS – RANDOM SAMPLE (N=164)<sup>39</sup>**

Military Service of Subject	Cases with Charges Preferred for PSA Offense (n=42)		Cases with No Action Taken for PSA Offense (n=122)		Total PSA Cases Reviewed
Army	17	23%	56	77%	73
Marine Corps	6	25%	18	75%	24
Navy	6	20%	24	80%	30
Air Force	12	36%	21	64%	33
Coast Guard	1	25%	3	75%	4

**B. The Case Review Process**

At the Committee’s request, each Service’s criminal investigative organization provided the Committee members and professional staff with copies of the identified investigative case files, unredacted, for review at the DAC-IPAD office in Arlington, Virginia.<sup>40</sup> Because investigative case files contain personal and sensitive information, all files provided to the DAC-IPAD by the MCIOs were carefully safeguarded as required by law and DoD policy and were returned to the MCIOs upon completion of the reviews.<sup>41</sup>

The investigative files provided to the Committee typically contained the following documents: the report of investigation; verbatim statements from key witnesses; summaries of statements made by the complainant, the subject, and other witnesses; a description of the crime scene; evidentiary photographs; digital evidence; forensic laboratory test results; and, in some cases, video recordings and/or agent notes. The investigative files usually included documentation of the initial disposition decision by commanders and the final outcome of any

39 For the 164 random sample cases, the dispositions of the penetrative sexual assault offenses were verified by DAC-IPAD staff through case file reviews.

40 Case files were provided to the DAC-IPAD in paper copies, on CD-ROMs, on external hard drives, or by other secure electronic method.

41 DEP’T. OF DEF. DIRECTIVE 5400.11, DoD PRIVACY PROGRAM (Oct. 29, 2014), available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/540011p.pdf>.

disciplinary or legal proceedings. In addition, some of the investigative files contained documentation of the subject's fingerprints, probable cause determinations, and legal memoranda from a judge advocate.

For cases in which one or more charges of a penetrative sexual assault were preferred, reviewers also examined relevant procedural case documents such as the charge sheet, Report of the Article 32 Preliminary Hearing Officer, and Report of Result of Trial, in addition to the information available in the investigative file. These judicial documents were retrieved from the DAC-IPAD's sexual assault case adjudication database, which is discussed in greater detail in Chapter 2 of this report.

During their examination of the available documents from case files and the DAC-IPAD's sexual assault case adjudication database, reviewers recorded relevant factual and evidentiary details, including their independent assessment of and any comments regarding the investigation of the case and its disposition. To guide the reviews, the Committee developed a 21-page standardized data collection form with 231 data elements that reviewers filled in by hand with data and comments for each case reviewed.<sup>42</sup> To establish standardized procedural and interpretive rules for the data gathered in each case, the Committee also developed a detailed instruction manual for completing each item on the case review informational form.

All of the information collected was entered into a secure electronic database developed and maintained by DoD and Committee staff. To ensure consistency across reviews by the Committee members and staff, the information documented by Committee members in the course of their reviews was routinely compared with the information recorded by staff. In addition, the Committee staff met frequently to ensure their own consistent practices in conducting reviews. The CRWG staff attorneys and paralegals conducted secondary and tertiary reviews of the completed forms prior to entering the information into the database to reconcile any factual discrepancies across reviewers and to further ensure consistency in the interpretation of the data collection form. Finally, the data extracted from the database were also reviewed for accuracy.

### **C. Status of the Case Review Project**

Beginning in February 2018, the Committee members individually traveled to the DAC-IPAD's Arlington, Virginia, office to review cases on a regular basis. The professional staff began its ongoing review of the full data set of 2,055 FY17 cases at the same time, starting with the random sample cases reviewed by the Committee members.

As of the October 19, 2018, DAC-IPAD public meeting, the Committee members had reviewed all of the 164 random sample cases in which charges were preferred or no action was taken for the penetrative sexual assault. The Committee makes its findings and recommendations in this chapter drawing on its review of these 164 cases. Once the Committee and staff have finished their review of all of the FY17 cases, the Committee will publish its complete results.

The process of reviewing and collecting data from investigative files has proved to be extremely time-intensive. Reviewers observed that not all investigative files included the same documents and that the contents varied across the Services. For example, Air Force files always contained agent's notes, while the Navy and Army included these notes only some of the time. Further, each of the Services documents command disposition

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<sup>42</sup> See Appendix F, Investigative Case Review Data Form, for the complete list of items documented for every MCIO case file reviewed by the Committee and staff.

decisions differently. Command disposition documentation was also often missing from the investigative files provided to the Committee and had to be specifically requested from the Service MCIOs.

On average, a thorough examination of a case in which no charges were preferred for the penetrative sexual assault takes a reviewer about three hours to complete; reviews of cases in which audio or video files are available, multiple subjects or victims are involved, or charges are preferred take even longer. Furthermore, considerable resources have been required to perform quality control tests on the checklists, to develop and refine the database in which the data from the forms are collected, and to enter and review the data. Lastly, the process of requesting, physically inventorying, collecting, maintaining, and returning case files has itself required significant resources.

### D. Way Ahead

As of February 5, 2019, the Committee members and staff have reviewed 1,482 cases out of the total population of 2,055 investigative cases closed in FY17. The Committee members and staff plan to have their review of the remaining cases completed by the summer of 2019. The results from the review of the entire population of cases will be presented in the DAC-IPAD's 2020 report.

**STATUS OF CASE REVIEWS AS OF FEBRUARY 5, 2019<sup>43</sup>**  
**NUMBER OF CASES REVIEWED TO DATE (N=1,482)**

Military Service of Subject	Charges Preferred	Non-judicial Punishment	Admin. Action	No Action	Total Cases Reviewed
Army	68	17	9	461	555
Marine Corps	52	2	3	186	243
Navy	16	3	3	237	259
Air Force	116	8	34	238	396
Coast Guard	12	3	6	8	29

**NUMBER OF CASES PENDING REVIEW (N=573)**

Military Service of Subject	Charges Preferred	Non-judicial Punishment	Admin. Action	No Action	Total Cases Pending
Army	80	35	84	160	359
Marine Corps	14	16	16	0	46
Navy	49	38	29	25	141
Air Force	1	7	17	2	27
Coast Guard	0	0	0	0	0

43 Although the data requested from the MCIOs was for the disposition of the penetrative sexual assault offense specifically, Committee and staff case reviewers have found that in some instances the action taken is for other, non-sexual misconduct. Therefore, the categorization by case disposition of the 2,055 penetrative sexual assault cases identified in this report is not always specific to the penetrative sexual assault offense and may in some cases reflect action taken for other offenses that were investigated in conjunction with the penetrative sexual assault. These case categorizations will be corrected in the 2020 report to accurately reflect the disposition of the penetrative sexual assault offense.

### III. COMMAND DISPOSITION OF PENETRATIVE SEXUAL ASSAULT COMPLAINTS

#### A. Introduction and Background

Over the past decade, the military, including commanders, has been criticized for taking insufficient action against Service members accused of sexual assault.<sup>44</sup> Reflecting this concern, in 2014 the United States Senate considered a bill to remove court-martial disposition authority from commanders in sexual assault cases and place it with military prosecutors.<sup>45</sup> Such a change would require a dramatic and unprecedented restructuring of the military justice process. However, to date, no entity has attempted to systematically analyze individual sexual assault cases for the specific purpose of determining whether commanders are making appropriate disposition decisions, or if there is indeed a systemic problem in how commanders are exercising this discretion.

The Judicial Proceedings Panel (JPP) was directed by Congress in 2013 to conduct this type of analysis; however, that panel quickly discovered that reliable data on sexual assault case dispositions and sentencing across the Services were not available from DoD.<sup>46</sup> Without reliable data, or access to investigative case files, the JPP determined in 2014 that it could not make qualitative assessments of military sexual assault cases because it was unable to review the facts and evidence in individual cases.<sup>47</sup> Therefore, the DAC-IPAD, which was specifically directed by Congress to look at individual cases, followed up on the previous congressional directive to the JPP and undertook a review of sexual assault investigative files in order to evaluate the reasonableness of command disposition decisions in these cases.

The Committee leveraged members' collective expertise in sexual assault case investigation and adjudication to assess whether, from an investigatory and legal standpoint, commanders are systemically exercising their authority to dispose of sexual assault offenses under the Uniform Code of Military Justice (UCMJ) appropriately, particularly when the commander declines to prefer charges for a penetrative sexual assault complaint. While such assessments are inherently subjective, they are an important way of responding to the need for Service members to have confidence in the military's criminal justice system and for the public to perceive the system as fair.

In making its assessment, the Committee cannot and does not relitigate or second-guess any single case or decision. The members recognize that they are not in a position to identify any individual case as having rightly

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44 See, e.g., *THE INVISIBLE WAR* (Chain Camera Pictures 2012); Craig Whitlock, *How the Military Handles Sexual Assault Behind Closed Doors*, WASH. POST, Sept. 30, 2017; Robert Draper, *The Military's Rough Justice on Sexual Assault*, N.Y. TIMES, Nov. 26, 2014.

45 Military Justice Improvement Act of 2013, S. Res. 1752, 113th Cong. § 2(a) (2013). Congress directed the Response Systems to Adult Sexual Assault Crimes Panel (RSP) to make "an assessment of the impact, if any, that removing from the chain of command any disposition authority regarding charges preferred under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), would have on overall reporting and prosecution of sexual assault cases." National Defense Authorization Act for Fiscal Year 2014, Pub. L. No. 113-66, 127 Stat. 672 (2013) [hereinafter FY14 NDAA], § 1731(a)(1)(A). The RSP recommended that Congress not adopt the Military Justice Improvement Act to modify the authority vested in convening authorities to refer sexual assault charges to courts-martial. See REPORT OF THE RESPONSE SYSTEMS TO ADULT SEXUAL ASSAULT CRIMES PANEL 2, 22 (June 2014) [hereinafter RSP REPORT], available at [http://responsesystemspanel.whs.mil/public/docs/Reports/00\\_Final/RSP\\_Report\\_Final\\_20140627.pdf](http://responsesystemspanel.whs.mil/public/docs/Reports/00_Final/RSP_Report_Final_20140627.pdf).

46 See National Defense Authorization Act for Fiscal Year 2013, Pub. L. No. 112-239, 126 Stat. 1632, § 576 (d)(2) (2013) (tasking the JPP with assessing the appropriateness and consistency of case dispositions, outcomes, and punishments).

47 JUDICIAL PROCEEDINGS PANEL REPORT ON STATISTICAL DATA REGARDING MILITARY ADJUDICATION OF SEXUAL ASSAULT OFFENSES 27 (April 2016) [hereinafter JPP REPORT ON STATISTICAL DATA], available at [http://jpp.whs.mil/public/docs/08-Panel\\_Reports/05\\_JPP\\_StatData\\_MilAdjud\\_SexAsslt\\_Report\\_Final\\_20160419.pdf](http://jpp.whs.mil/public/docs/08-Panel_Reports/05_JPP_StatData_MilAdjud_SexAsslt_Report_Final_20160419.pdf) ("Without knowing more about the facts of individual cases, the JPP cannot assess the appropriateness of case disposition decisions. Specific factors in each case, including the nature of the offenses, any mitigating or extenuating circumstances, the willingness of a victim to testify, and the strength of available evidence, affect disposition decisions. It is neither possible nor appropriate to make collective assessments based solely on the general nature of charges and the forum for disposition.").

or wrongly resulted in the preferral or non-preferral of charges for the penetrative sexual assault, as there are many variables that cannot be gleaned from a review of an investigative file alone. However, on the basis of their review of 164 individual case files, the Committee members could develop a sense of whether commanders charged with making preferral decisions in sexual assault cases are doing so in a manner consistent with the Committee members' own experience and judgment. In addition, the reviewers could identify any concerning patterns regarding command decision-making in sexual assault cases.

### **B. Methodology for Assessing the Reasonableness of Disposition Decisions**

Committee members serving on the Case Review Working Group reviewed 164 investigative files closed in FY17 that involved a complaint of a penetrative sexual assault made by an adult victim against an active duty Service member subject. In assessing the “reasonableness” of the command’s disposition decision in individual cases—that is, whether the command’s disposition decision was within an appropriate zone of discretion—the members were informed by their diverse perspectives and expertise in criminal justice.

The Committee members recognized that what is “reasonable” to one person may not be “reasonable” to another. Therefore every investigative case file reviewed from the random sample was reviewed at least twice, by both a Committee member and a DAC-IPAD professional staff member. Further, a third reviewer—either a Committee member or DAC-IPAD staff attorney—reviewed the case file if any previous reviewer determined that the command’s disposition decision was not supported by the evidence reviewed in the investigative file. Each reviewer made an independent assessment based on the same facts. All reviewers recorded their individual comments and opinions.

In the 122 cases in which the investigation of a penetrative sexual assault complaint resulted in no action taken for the penetrative sexual assault, the reviewers evaluated whether the command’s decision to decline to prefer charges for the penetrative sexual assault was reasonable. Reviewers did not assess whether they would have reached a different conclusion in a specific case; reviewers assessed whether the decision regarding the penetrative sexual assault, based on all of the evidence contained in the investigative file, was reasonable.

In the 42 cases in which the investigation of a penetrative sexual assault complaint resulted in preferred charges for a penetrative sexual assault, the reviewers assessed whether the command’s decision to prefer charges and initiate a criminal justice proceeding was reasonably supported by the evidence contained in the investigative file.

### **C. The Committee’s Evaluation of Command Disposition Decisions in Penetrative Sexual Assault Cases**

In 95% of the investigative case files that the Committee reviewed, a majority of reviewers (two out of two reviewers or two out of three reviewers) determined that the command’s disposition decision regarding the penetrative sexual assault complaint was reasonable. The percentage of command disposition decisions determined to be reasonable was similar whether the commander preferred charges for the penetrative sexual assault (95%) or did not prefer charges for the penetrative sexual assault (94%).

The reviewers’ decisions were largely consistent regardless of whether the reviewer was a Committee member or professional staff member, regardless of whether the reviewer had expertise in military justice, and regardless of whether the reviewer’s professional background involved investigating, prosecuting, or defending individuals charged with sexual assault offenses. Reviewers determined that the commander’s disposition decision was not

supported by the evidence in the investigative file reviewed by the Committee in 7—or 6%—of the 122 cases in which no charges were preferred. Similarly, out of the 42 cases in which charges were preferred for a penetrative sexual assault, reviewers determined that the commander’s decision to prefer charges was not supported by the evidence reviewed in the case file in 2—or 5%—of those cases.

**ASSESSMENT OF COMMAND DISCRETION BASED ON  
THE COMMITTEE’S REVIEW OF INVESTIGATIVE CASE FILES CLOSED IN FY 2017  
INVOLVING PENETRATIVE SEXUAL ASSAULT COMPLAINTS (N=164)<sup>48</sup>**

Reviewer Assessment of Disposition Decision	Charges Preferred for PSA Offense (n=42)		No Charges Preferred for PSA Offense (n=122)		Total Reviewed Sample PSA Cases Closed in FY 2017	
<b>Majority found reasonable</b>	40	95%	115	94%	155	95%
<b>Majority found unreasonable</b>	2	5%	7	6%	9	5%

**D. Discussion**

Through its independent assessment of 164 cases, in 122 (or 74%) of which charges were not preferred for a penetrative sexual assault, the Committee determined that the overwhelming majority of those cases—115 out of 122 (94%)—were appropriately declined for preferral by the command. The remaining 6% of decisions not to prefer charges for a penetrative sexual assault were found by the majority of reviewers not to be supported by the evidence reviewed in the case file. The Committee members note that these do not necessarily constitute cases in which charges should have been preferred; rather, the reviewers felt they would need to consider more information before they could adequately evaluate whether the disposition decision was reasonable. Such additional information could include a review of the prosecution merits memorandum and perhaps interviews with the judge advocates and commander involved. However, the Committee felt that such an endeavor would be unnecessary, since review of the 164 cases from the random sample reveals no sign of systemic problems with the reasonableness of commanders’ decisions on whether to prefer charges in cases involving a penetrative sexual assault.

The same is true for the 42 cases reviewed in which the command preferred charges for a penetrative sexual assault. The Committee noted that 95% of these cases were deemed to have been reasonably decided as well. The remaining 5% of decisions to prefer charges were found by the majority of reviewers not to have been sufficiently supported by the case file. Again, this is not a dispositive finding that it was unreasonable for the command to have preferred charges, only a finding that more information would need to be reviewed in these cases.

<sup>48</sup> Out of the 42 cases in which charges were preferred for a penetrative sexual assault, reviewers unanimously (three out of three reviewers) found the command decision reasonable in 37 (88%) of the cases, and the majority of reviewers (two out of three reviewers) found the command decision reasonable in 3 (7%) of the cases. Of the preferred cases, reviewers unanimously found the command decision unreasonable in one case, and a majority of reviewers found the command decision unreasonable in one case. Out of the 122 cases in which no charges were preferred for a penetrative sexual assault, reviewers unanimously found that the command disposition was reasonable in 105 (86%) of the cases, and a majority of reviewers found the command decision reasonable in another 10 (8%) of the cases. A majority of reviewers found the command decision unreasonable in 3 (2%) of the cases in which charges were not preferred, and reviewers unanimously found that the command decision was unreasonable in 4 (3%) of those cases in which charges were not preferred.

The Committee noted that the reasonableness of command decisions was nearly identical both in the cases in which charges were preferred and in those in which no action was taken. This consistency lends support to the Committee's conclusion that there is no systemic problem with command decision-making regarding preferral of charges for penetrative sexual assaults.

Regardless of whether a case should be prosecuted at trial or court-martial, it is vital to continue encouraging people to report suspected sexual offenses. In many of the cases that cannot be prosecuted for evidentiary reasons—often involving excessive alcohol consumption—the victims or reporting witnesses are terribly upset and traumatized by what has occurred. Whether or not the reported incident rises to the level of a criminal offense or is provable in a court-martial, it is still important that these men and women feel comfortable reporting the event so that they may receive the support they need and appropriate counseling or other medical treatment. Reporting also makes it possible for victims and reporting witnesses to discuss their cases with investigators or victim services personnel who can help them process the upsetting or traumatic events.

### **E. Finding**

**Finding 12:** Based on the review of 164 military investigative cases, the DAC-IPAD finds that commanders' dispositions of penetrative sexual assault complaints are reasonable in 95% of cases.

## **IV. DESCRIPTIVE DATA COLLECTED FROM INVESTIGATIVE CASE FILES**

### **A. Introduction and Background**

The data reported in this section provide descriptive characteristics of the 164 penetrative sexual assault cases closed in FY17 that were reviewed by the Committee members.<sup>49</sup> The data are drawn from reviews of the investigative files and, for cases in which charges were preferred, any additional documents in the Committee's separate sexual assault case adjudication database, such as the transcript and findings from the preliminary hearing and documentation of the trial result.

### **B. Characteristics Related to Reporting Type, Reporting Party, and Reporting Time in Military Sexual Assault Investigations**

A victim of sexual assault in the military has the option to make a restricted or an unrestricted report of the assault. A restricted report allows the victim to confidentially disclose the assault to specifically identified individuals—such as a health care professional, a sexual assault response coordinator (SARC), a victim advocate (VA), or a representative from the Services' Family Advocacy Programs (FAP), known as a domestic abuse victim advocate (DAVA)—without triggering a criminal investigation.<sup>50</sup> An unrestricted report, on the other hand, triggers a criminal investigation. If the victim initially makes a restricted report, he or she may convert it into an unrestricted report at a later point.

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<sup>49</sup> This report does not address the race or ethnicity of victims or subjects, because this information is not consistently or reliably documented in the investigative case files. The DAC-IPAD will address the categorizations of race and ethnicity after it receives clarification from the Services.

<sup>50</sup> Reporting Options and Sexual Assault Reporting Procedures, 32 C.F.R. § 105.8(a)(5) (2016).

### *Conversion from Restricted to Unrestricted Reports*

When collecting data from case files, reviewers recorded whether a sexual assault report was initially restricted. Reviewers observed that no official document explicitly provides that information: it had to be gleaned either from the victim statement or from a note in the file from the investigation. They found that 28 (17%) of the 164 investigations began as restricted reports; out of those 28 investigations, 9 victims (32%) declined to participate after converting the report into an unrestricted report.

### *Status of Person Reporting the Sexual Assault*

Certain personnel in the military—such as commanders and noncommissioned officers in the victim’s chain of command—are mandatory reporters of sexual assault: that is, they must alert the MCIO if they learn of a sexual assault in any way, whether or not the victim wishes to participate in a criminal investigation.<sup>51</sup> MCIOs, in turn, have a duty to investigate any sexual assault report with a military nexus, including reports made by a third party or reports involving a victim who declines to participate at the reporting stage.<sup>52</sup> Unlike mandatory reporters, victim-authorized representatives, such as SARCs, VAs, DAVAs, special victims’ counsel (SVCs), and victims’ legal counsel (VLCs) may report a sexual offense to an MCIO only when the victim affirmatively indicates that he or she wants the report to be unrestricted.<sup>53</sup>

Reviewers recorded and classified reports of sexual assault into victim reports, victim-authorized representative reports, command reports, and third-party reports. The majority of sexual assault investigations (63%) come to the attention of the MCIOs from someone other than the victim.

**INITIATION OF INVESTIGATION:  
CLASSIFICATION OF REPORTING PERSON (N=164)**

Reporting Person	Number of Cases	Percentage of Cases
Victim	60	37%
Victim-authorized representative	43	26%
Command	33	20%
Other third party	28	17%

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51 Reporting Options and Sexual Assault Reporting Procedures, 32 C.F.R. § 105.8(a)(5)(i) (2016).

52 DEP’T OF DEF. INSTR. 5505.03, INITIATION OF INVESTIGATIONS BY DEFENSE CRIMINAL INVESTIGATIVE ORGANIZATIONS [hereinafter DoDI 5505.03], ¶ 4(d) (Mar. 24, 2011, Incorporating Change 2, Feb. 13, 2017). *See also* DoDI 5505.18, INVESTIGATION OF ADULT SEXUAL ASSAULT IN THE DEPARTMENT OF DEFENSE [hereinafter DoDI 5505.18], ¶ 1.2 (Mar. 22, 2017, Incorporating Change 1, Effective Feb. 13, 2018).

53 DEP’T OF DEF. INSTR. 6495.02, SEXUAL ASSAULT PREVENTION AND RESPONSE (SAPR) PROGRAM PROCEDURES [hereinafter DoDI 6495.02], encl. 2 (Mar. 28, 2013, Incorporating Change 3, May 24, 2017). Special victims’ counsel and victims’ legal counsel are judge advocates who are available to represent Service member victims and certain other individuals who are victims of sexual assault free of charge. SVCs and VLCs can represent victims of sexual assault regardless of whether the sexual assault report is restricted or unrestricted. *See* FY14 NDAA, *supra* note 45, § 1716.

**INITIATION OF INVESTIGATION:  
THIRD PARTY AS REPORTING PERSON (N=28)**

Classification of Third-Party Reporting Person	Number of Cases	Percentage of Cases
Victim's spouse or intimate partner	7	25%
Family, friend, neighbor	11	39%
Other	10	36%

*Timeliness of Reporting the Sexual Assault*

In the course of its analysis, the JPP found some correlation between the promptness with which a sexual assault was reported to law enforcement and the likelihood that a case will be prosecuted and tried to verdict.<sup>54</sup> The Committee's review of sexual assault cases included an analysis of the amount of time that elapsed between the date of the incident and the date of its report to law enforcement by either a victim or a third party. In order to conduct this analysis the Committee members and staff extracted those dates from each investigative file. For cases involving multiple offenses or an estimated date range, the Committee used the date of the most recent occurrence.

For the 122 cases reviewed by the Committee in which no action was taken for the penetrative sexual assault, 31 days was the median amount of time that elapsed between the date of the incident and the report to law enforcement—meaning half of the cases reviewed were reported in fewer than 31 days, and half of the cases reviewed were reported in more than 31 days. For cases in which charges were preferred (42 out of 164 cases reviewed), the median reporting time was 7 days after the incident.

Overall, more than one-third (34%) of complaints to law enforcement involving a penetrative sexual assault were made within 48 hours of the incident, and a majority (53%) were reported within one month of the incident. The table below further illustrates the time elapsed from incident to report across the cases reviewed by the Committee.

**TIME ELAPSED BETWEEN INCIDENT AND COMPLAINT (N=164)**

Time Elapsed Between Incident and Report to Law Enforcement	Total Number of Cases and Percent of Total		Cases in Which No PSA Charge Preferred		Cases in Which PSA Charge Preferred	
	Number	Percent	Number	Percent	Number	Percent
Reported within 48 hours	55	34%	38	31%	17	40%
Reported between 3 and 30 days	33	20%	22	18%	11	26%
Reported between 1 and 6 months	43	26%	32	26%	11	26%
Reported between 6 and 12 months	12	7%	10	8%	2	5%
Reported more than 1 year later	16	10%	15	12%	1	2%
Reported more than 10 years later	2	1%	2	2%	0	0%
Date of incident not indicated	3	2%	3	2%	0	0%

54 See JPP REPORT ON STATISTICAL DATA, *supra* note 47, at 16.

**C. Duration of Military Criminal Investigations into Complaints of Penetrative Sexual Assault**

While collecting data from case files, the Committee captured information about key dates during the investigation. In every investigative file, the MCIOs documented the date on which they opened the investigation and the date on which they provided the completed investigation to the command. The Committee used these dates to measure the length of the investigation, understanding that in individual cases MCIOs may investigate further after presenting a case to a commander, or they may have an administrative reason, such as documenting the receipt of long-awaited forensic laboratory test results, to issue a supplemental report. In general, however, providing a case to a commander for a disposition decision marks the conclusion of the MCIO investigation.

Overall, the average duration of an investigation was 190 days, or just over six months. Investigations that did not result in the preferral of a penetrative sexual assault charge took slightly less time, 175 days on average, while cases in which one or more penetrative sexual assault charges were preferred lasted longer—236 days, on average.

**DURATION OF INVESTIGATION (N=164)**

	All Investigations	Duration of Investigations Resulting in No Preferral of a PSA Offense (n=122)	Duration of Investigations Resulting in Preferral of One or More Charges of a PSA Offense (n=42)
Average Duration (days)	190	175	236
Median Duration (days)	154	149	163

In addition, the Committee analyzed the amount of time that elapsed from the opening of an investigation into a reported penetrative sexual assault to the date on which a commander decided how to dispose of the case. This timeframe encompasses not only the initial investigation but also any follow-on investigative activity and consultation between a commander and judge advocate concerning the options available for disposing of the case. For most of the cases it reviewed, the Committee was able to identify the date on which a commander decided, on the basis of the evidence in the investigative file and the advice of a judge advocate, to prefer one or more charges of penetrative sexual assault or to take no action on the penetrative sexual assault complaint.

Cases in which a commander decided not to take action on the penetrative sexual assault took on average 266 days (almost 9 months) to complete. Cases in which one or more charges of penetrative sexual assault were preferred had an average duration of 226 days (more than 7 months) from the opening of the investigation to the date of preferral. Given the Committee’s focus on the investigative phase of a case and on cases closed without action, the Committee did not collect data on the duration of the military justice process (i.e., the length of time elapsed from preferral to trial or an alternate resolution).

**TIME ELAPSED FROM DATE OF REPORT TO DISPOSITION DECISION DATE (N=164)<sup>55</sup>**

	<b>Time Elapsed (Days) from Date of Report to Date of Decision Not to Take Action (n=97)</b>	<b>Time Elapsed (Days) from Date of Report to Date of Preferral of One or More Charges of a PSA Offense (n=37)</b>
Average Duration (days)	266	228
Median Duration (days)	227	179

**D. Victim Characteristics**

Reviewers recorded demographic information as well as military-specific characteristics of victims. Reviewers classified victims as either a Service member or civilian. Service member victims were further classified by their branch of Service, age, rank, and pay grade. If appropriate, civilian victims were further designated as “civilian spouse of a Service member,” “other family members,” or “foreign nationals.” A designation of civilian spouse of Service member did not necessarily mean that his or her Service member spouse was the subject of the investigation.<sup>56</sup> Foreign nationals are victims who reside in the country to which the Service member is assigned. Other family members are victims who are related to a Service member but are not spouses; a family member designation does not mean that the related Service member is the subject of the investigation.

The DAC-IPAD found that a victim was most commonly characterized as a female, active duty enlisted Service member in her late teens or early twenties. The next largest demographic was civilian spouses of Service members. In 50% of the cases involving a civilian spouse of a Service member, the subject of the investigation was not the spouse but another Service member.

**VICTIM: DEMOGRAPHIC CHARACTERISTICS (N=164)**

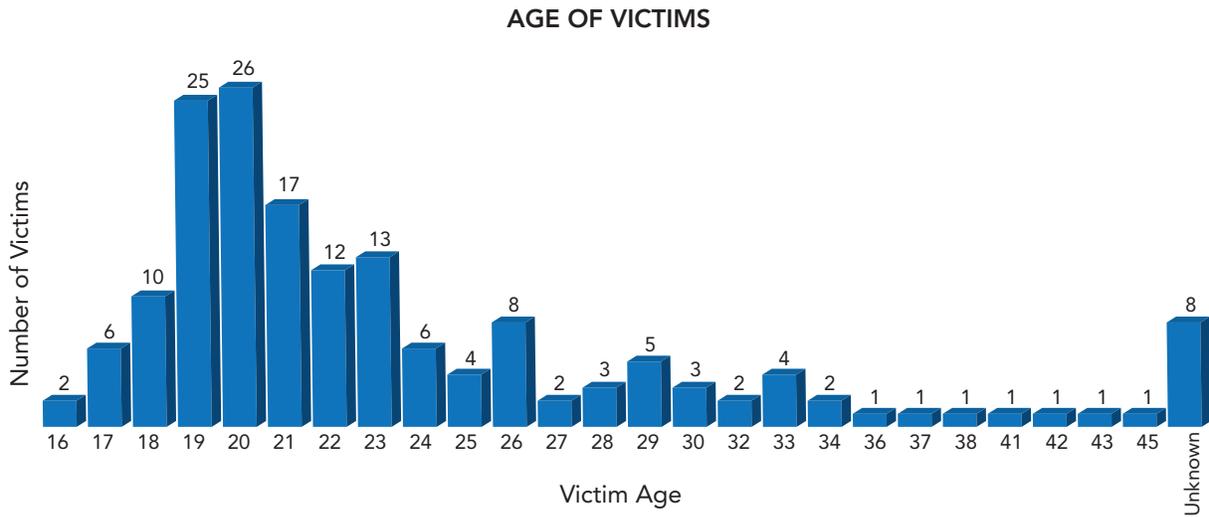
<b>Sex of the Victim</b>	<b>Number of Victims</b>	<b>Percentage of Victims</b>
Female	150	91%
Male	14	9%

<sup>55</sup> Only 97 out of 122 no action cases (80%) and 37 of the 42 preferred cases (88%) had sufficient documentation in the investigative file for the DAC-IPAD to calculate the time elapsed from the date of the report to the date of the command disposition decision.

<sup>56</sup> There are three victims with dual characteristics of Service member and spouse of a Service member. For purposes of these tables they are classified as Service members rather than spouses of Service members. All three victims reported that they were assaulted by their Service member spouse.

Status of the Victim	Number of Victims	Percentage of Victims
Enlisted	73	45%
Officer	3	2%
Civilian spouse of Service member	40	24%
Other family member	10	6%
Other civilian	34	21%
Foreign national	2	1%
Unknown victim*	2	1%

\*One unknown victim was a Service member but no other identifying information is known.



### E. Victim-Subject Relationship

Reviewers analyzed the relationships between the victims and subjects in the sample of 164 cases. The relationship data were analyzed by recording the victim's and subject's description of their relationship.<sup>57</sup> The most common relationship reported is "friend" (30%), followed by intimate partner or former intimate partner (24%). Together these categories represent over half of the cases and show that the parties involved in most cases have a close relationship. Cases involving acquaintances occurred 18% of the time. Incidents between strangers were relatively rare, occurring 7% of the time.

RELATIONSHIP OF VICTIM TO SUBJECT (N=164)

Relationship of Victim to Subject	Number of Victims	Percentage of Victims
Spouse/intimate partner/ former intimate partner	39	24%
Friend	49	30%
Co-worker/classmate/roommate	17	10%
Acquaintance	29	18%
Online/met for the first time	9	5%
Stranger	11	7%
Other	4	2%
Unknown/unable to determine	6	4%

### F. Victim Participation in the Military Justice Process

Reviewers recorded any indication in the investigative case file that a victim declined to participate in either the investigation or the prosecution of the case. Investigative files provided this information in a number of ways. Some files contained a formal declination from the victim or the victim's representative, others included narrative notes from the investigator stating that the victim declined to participate, and still others contained a memorandum from the victim or the victim's attorney directly to the commander declaring that he or she did not want to participate or have action taken against the subject.

Out of the 164 cases reviewed, documentation indicated that 56 (34%) victims declined to participate at some stage in the criminal justice process. In some cases, a victim may have declined to participate after an investigation was complete, but the reviewers rarely found documentation in the investigative case files indicating that a victim declined to participate after the investigation stage. However, if charges were preferred in the case, the DAC-IPAD's case adjudication database (discussed in Chapter 2) sometimes contained formal memoranda indicating a victim declined to participate in a case after charges were filed, and this declination would be noted by reviewers in their case reviews. If information specifically indicating that the victim declined to participate was not identified, reviewers assumed for purposes of analysis that the victim participated in the military justice process. The data collected from the case reviews showed that as a group, civilian spouses of

57 See Appendix G, Statistical Report on Sexual Assault Investigations Closed in Fiscal Year 2017: Results from a Sample of 164 Cases, at Tables 8 and 9.

Service members were the most likely to decline to participate (50%); Service members were the second-largest group of non-participating victims (32%). Civilians, including family members, declined to participate in the fewest cases (20%–25%).<sup>58</sup>

**VICTIM: DECLINATION TO PARTICIPATE WITH THE INVESTIGATION BY STATUS (N=164)**

Victim Status	Number of Victims Declining to Participate	Percentage of Victims Declining to Participate	Total Victims by Status
Service member	24	32%	76
Civilian spouse of Service member*	20	50%	40
Family member	2	20%	10
Other civilian	9	25%	36
Unknown	1	50%	2

*\* In 12 of the cases, the subject was the Service member spouse of the victim.  
In 8 cases, the subject was a Service member other than the victim's spouse.*

Comprising 47% and 24% of the victims, respectively, in the 164 cases reviewed, Service members and their civilian spouses represented the largest segment of the 56 non-participating victims (79%).

Reviewers recorded whether the investigative case file indicated that the victim was represented by a special victims' counsel (SVC), victims' legal counsel (VLC), or civilian victim's attorney.<sup>59</sup> Reviewers found that documentation of legal representation of victims was inconsistent in the case files. Some case files contained a formal notice of legal representation, others contained only investigator notes referring to a conversation with a victim's attorney, and still others contained only a memorandum from a victim's attorney communicating the victim's desire not to participate in the case. If no documentation of SVC, VLC, or other legal representation was found in the case file, reviewers assumed that the victim was not represented. In the 164 cases reviewed, 81 victims (49%) were represented by an SVC, VLC, or civilian counsel. The reviewers also found that a victim's representation by counsel did not have a significant effect on whether they participated in the process. In fact, victim participation decreased slightly for victims represented by an attorney.

**VICTIM: STATUS OF LEGAL REPRESENTATION AND PARTICIPATION STATUS (N=164)**

Victims' Legal Representation Status	Victim Participated in Investigation		Victim Declined to Participate in Investigation		Total Number of Victims
Victims represented by counsel	51	63%	30	37%	81
Victims not represented by counsel	57	69%	26	31%	83

<sup>58</sup> Although 1 (50%) of the 2 victims with unknown status declined to participate, these numbers are too low to support analysis.

<sup>59</sup> SVCs and VLCs can represent victims of sexual assault regardless of whether the sexual assault report is restricted or unrestricted. See FY14 NDAA, *supra* note 45, § 1716.

The Committee examined the rate of victim participation based on the status of the person making the sexual assault report. The members noted that the highest rate of victim participation in the military justice process (82%) occurred when the command reported the incident. When the victim reported the incident, he or she participated in 65% of the cases (39 of 60); when someone else reported the incident, the victim participated in 66% of the cases (69 of 104).

**VICTIM: CLASSIFICATION OF REPORTING PERSON AND PARTICIPATION STATUS (N=164)**

Classification of Reporting Person	Victim Participated in Investigation		Victim Declined to Participate in Investigation		Total Reporting Persons
Victim	39	65%	21	35%	60
Victim-authorized representative	25	58%	18	42%	43
Command	27	82%	6	18%	33
Other third party	17	61%	11	39%	28

**G. Subject Characteristics**

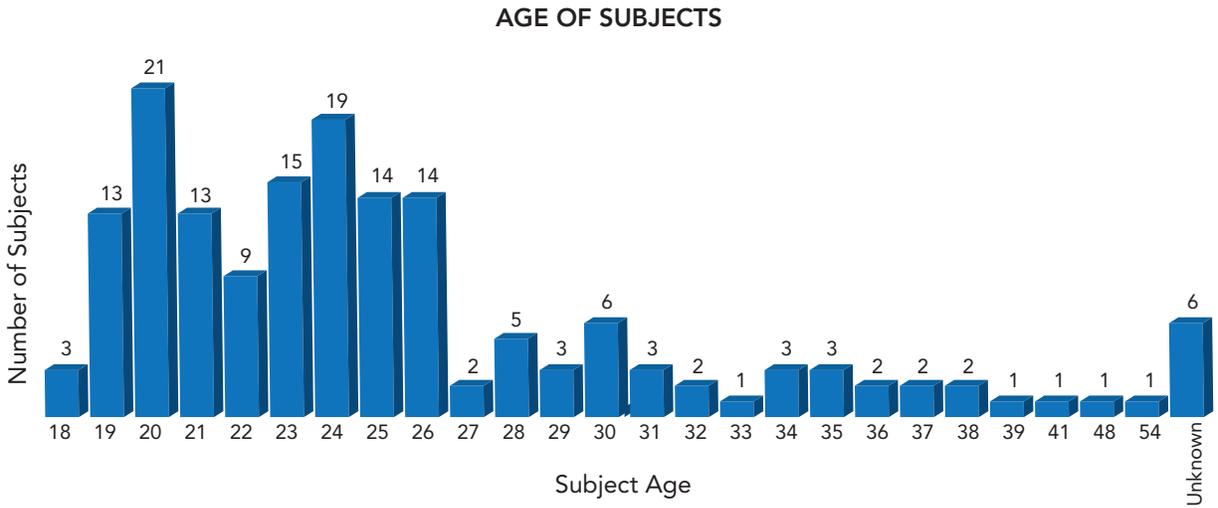
Reviewers recorded the demographics of Service member subjects.<sup>60</sup> The subject was most commonly an enlisted male in his twenties.

**SUBJECT: DEMOGRAPHIC CHARACTERISTICS (N=164)**

Sex of the Subject	Number of Subjects	Percentage of Subjects
Female	2	1%
Male	162	99%

Status of the Subject	Number of Subjects	Percentage of Subjects
Enlisted	151	92%
Officer	13	8%

<sup>60</sup> The Committee limited the case review to cases in which the subject was a Service member on active duty at the time of the incident. There were a few minor exceptions, which will be discussed in a later report on the complete case review.



**H. Subject Representation**

Reviewers recorded whether a subject was interviewed by the MCIO or a civilian investigator. In 74% of investigations, subjects waived their Article 31 right to remain silent under the UCMJ or their Fifth Amendment rights and were interviewed by law enforcement. Eleven subjects were represented at the time of their initial interview.

**SUBJECT: STATEMENT TO LAW ENFORCEMENT (N=164)**

Subject Status Regarding Statement	Number of Subjects	Percentage of Subjects
Subject provided statement	122	74%
Subject invoked right to remain silent	42	26%

**SUBJECT: LEGAL REPRESENTATION AT INITIAL INTERVIEW (N=11)**

Represented Subject Status Regarding Statement	Number of Subjects	Percentage of Subjects
Represented subject provided statement	4	36%
Represented subject invoked right to remain silent	7	64%

## V. INVESTIGATOR DISCRETION

### A. Introduction and Background

During the case reviews, the Committee paid particular attention to the types of investigative action taken in each penetrative sexual assault case. The Committee sought to assess whether the military was conducting complete and thorough investigations into complaints of sexual assault.

### B. Analysis of and Testimony about Investigator Discretion in Sexual Assault Cases

Committee members observed that nearly all the case files they reviewed included the same series of investigative actions. The members believed that in some cases, these investigative tasks appeared to have no probative value and were extraneous and unnecessary given the specific facts of the case. For example, members noted that investigative files routinely included photographs of the location of the incident, even if the incident had occurred many years earlier when the location looked completely different. Investigative files also routinely included interviews of a subject's and victim's co-workers, friends, family members, and former intimate partners when these interviews had nothing to do with the incident.

The Committee's observations were reinforced by testimony received from MCIO investigators, many of whom commented that they have little discretion in determining what steps to take when conducting sexual assault investigations. One investigator noted that investigators have "less control" when conducting investigations than they previously had, adding, "There's almost a checklist and people feel very required to do absolutely everything that is on the checklist."<sup>61</sup> Another noted that investigators have to do the same amount of work for cases that are unlikely to be prosecuted as for cases in which a felony trial is likely.<sup>62</sup> However, the investigators explained that some of the seemingly extraneous investigative steps did serve specific purposes. For example, they told the Committee members that the reason they conduct interviews of a subject's co-workers in a sexual assault case is to detect predatory behavior and identify other potential victims of sexual assault or harassment.<sup>63</sup>

### C. Discussion

The DAC-IPAD is concerned about the investigators' lack of discretion in how they conduct investigations in sexual assault cases. The Committee noted that the military is treating the investigators as if they were untrained and not fully capable, without giving any credence to their experience and professionalism.<sup>64</sup> Members added that some of the steps taken in military sexual assault investigations, such as interviewing a subject's co-workers, would never be taken in similar civilian investigations.<sup>65</sup> At the same time, the Committee is reluctant to recommend that investigators adopt civilian standards or omit certain investigative tasks, recognizing that what seems extraneous may end up being useful in certain investigations.<sup>66</sup>

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61 See generally *Transcript of CRWG Preparatory Session 176* (Mar. 6, 2018).

62 *Id.* at 179-80.

63 *Id.* at 173.

64 See *Transcript of CRWG Preparatory Session 133* (July 19, 2018) (comments of Ms. Martha Bashford, CRWG member).

65 *Id.* at 140 (comments of Ms. Martha Bashford, CRWG member).

66 *Id.* at 130 (comments of Ms. Jennifer Gentile Long, CRWG member).

## D. Finding and Assessment

**Finding 13:** Military investigators testified that they feel obligated to perform the same series of investigative tasks regardless of the facts of a particular case and that they have little discretion to determine which specific investigative actions would provide the most value.

**Assessment:** The Committee will continue to monitor this issue.

## VI. DOCUMENTATION OF COMMAND DISPOSITION DECISIONS

### A. Introduction and Background

During the course of their case reviews, Committee members serving on the CRWG examined MCIO investigative case files for 164 penetrative sexual assault cases involving an adult victim and a Service member subject. The reviewers examined and recorded the action taken by the command for the penetrative sexual assault based on the information contained in the command disposition documents in the case files. Command disposition documents should be included in the investigative files in compliance with DoD policy, which requires the commander of a Service member who is the reported subject of a sexual assault investigation to provide the Service MCIO with written “disposition data” within five business days of disposition.<sup>67</sup> In accordance with the policy, disposition data must include “[a]ny administrative, non-judicial punishment, or judicial action that occurs as a result of the investigation” as well as a “declination of command action when no action is taken.”<sup>68</sup>

The commander’s written disposition documentation is used by MCIOs for three purposes. First, MCIOs use the information to complete the final disposition report they are required to submit to the national criminal history databases maintained by the Criminal Justice Information Services (CJIS) Division of the FBI; these include the National Crime Information Center (NCIC). Second, the MCIOs use the information to meet federal crime data reporting requirements for the Defense Incident-Based Reporting System (DIBRS) and the FBI’s National Incident-Based Reporting System (NIBRS), in accordance with the Uniform Crime Reporting Act. Third, the MCIOs use the information internally to close the investigative case.<sup>69</sup> In addition to its use by MCIOs, two Services, the Navy and Marine Corps, have developed command disposition forms specifically related to sexual assault cases for another purpose: to provide case information to the DoD Sexual Assault Prevention and Response Office’s (SAPRO’s) Defense Sexual Assault Incident Database (DSAID).<sup>70</sup>

In conducting case reviews, the Committee discovered that even though commanders were making reasonable disposition decisions in the overwhelming majority of cases with respect to the reported penetrative sexual

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<sup>67</sup> DoDI 5505.18, *supra* note 52, ¶ 2.2.e.

<sup>68</sup> *Id.*

<sup>69</sup> Uniform Federal Crime Reporting Act of 1988, 34 U.S.C. § 41303; DEP’T OF DEF. INSTR. 7730.47, DEFENSE INCIDENT-BASED REPORTING SYSTEM (DIBRS) [hereinafter DoDI 7730.47], ¶ 3.a. (Jan. 23, 2014, Incorporating Change 1, June 29, 2018). Under the Uniform Federal Crime Reporting Act of 1988, as implemented by DoDI 7730.47, DoD law enforcement agencies are required to report criminal information to the U.S. Attorney General, as part of the Uniform Crime Reports.

<sup>70</sup> See DoDI 6495.02, *supra* note 53. DSAID has three primary functions: (1) to serve as a case management system to maintain data on sexual assault cases and to track support for victims in each case, (2) to facilitate program administration and management for SAPR programs, and (3) to develop congressional reports, respond to ad hoc queries, and assist in trend analysis.

assault, the documentation found in MCIO files that is used to memorialize these decisions was sometimes inconsistent or inaccurate. The reviewers noted that the Services use different methods for documenting command decisions in sexual assault cases and different terminology to explain the reasons for these decisions. In addition, the Committee noted that in cases that did not result in court-martial, MCIO case files frequently do not contain command action reports or other documentation of the final case disposition at all.

Congress recently passed section 535 of the National Defense Authorization Act (NDAA) for Fiscal Year 2019, which requires the Secretary of Defense to establish a uniform command action form, applicable across the Armed Forces, for reporting the final disposition of sexual assault complaints in which (1) the subject is a member of the Armed Forces and (2) the victim files an unrestricted report on the sexual assault.<sup>71</sup> In response to this new statutory provision, the DAC-IPAD makes two recommendations—discussed below—that are intended to assist DoD in creating a policy and a standardized form that accurately and consistently records each commander’s rationale for his or her disposition decisions so that the Services can produce and report meaningful data in the future.<sup>72</sup>

## **B. Analysis and Testimony Regarding Command Disposition Policy, Documentation, and Terminology**

### ***1. Inconsistencies in Disposition Documentation and Terminology***

Currently each Service uses a different format for reporting case disposition information. While the Air Force uses a memorandum from the general court-martial convening authority to memorialize the command disposition decision in the investigative case file, the Army, Navy, Marine Corps, and Coast Guard use Service-specific forms to record this information.<sup>73</sup> Unlike the Army, which uses a standard command disposition form for investigations of all offenses, including sexual assault, the Navy and Marine Corps have developed a sexual assault-specific case disposition form that is completed by commanders for sexual assault investigations only. These Sexual Assault Disposition Reports (SADRs) are 8- to 10-page forms designed to record sexual assault case information for entry into the Defense Sexual Assault Incident Database—a federally mandated DoD database developed to collect data related to sexual assault complaints involving Service members.<sup>74</sup>

Committee members noted during their case reviews that the terminology contained in the case disposition forms and in memoranda commanders use to document the rationale for the action taken in a particular case is inconsistent across the Services.<sup>75</sup> For cases in which no action is taken by the command for the penetrative sexual assault, some of the documents explain the disposition decision in legal terms such as “no probable cause”; some use law enforcement terminology such as “unfounded”; and some contain terms used only by DoD SAPRO, such as “insufficient evidence.”<sup>76</sup> MCIO investigators explained that they sometimes have difficulty

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71 FY19 NDAA, *supra* note 5, § 535.

72 See DAC-IPAD Recommendations 5 and 6, *infra* p. 47.

73 The Army uses Department of the Army Form 4833, Commander’s Report of Disciplinary or Administrative Action; the Navy and Marine Corps use Sexual Assault Disposition Reports (SADRs); and the Coast Guard uses a Report of Adjudication form.

74 See DoDI 6495.02, *supra* note 53.

75 Action on a case includes the decision to take no action.

76 The Air Force stated reasons for non-action include “insufficient evidence,” “victim preference,” “no probable cause,” and “unfounded.” The Army

identifying the appropriate case clearance code because the language provided in DoD or Service-specific SAPRO forms, and in some other command action documents, does not necessarily align with law enforcement case closure terminology.<sup>77</sup>

The table below, whose contents are discussed in more detail in Appendix G, shows the variances in the terminology and the inconsistency in the application of common terms across organizations within a Service.<sup>78</sup> The table also includes a column indicating the probable cause determination made by a judge advocate with respect to the penetrative sexual assault for federal indexing purposes.

**CASE DISPOSITION TERMS MOST COMMONLY UTILIZED ACROSS ORGANIZATIONS  
FOR CASES IN WHICH NO ACTION WAS TAKEN (N=122)**

Terms Utilized to Indicate Reason No Action Taken	Command Disposition Documentation*	DoD DIBRS Policy for Federal Reporting by Law Enforcement	MCIO Case Management System Records	Probable Cause Opine by Judge Advocate for Federal Indexing
No Probable Cause	20	Not an Option	Not an Option	65
Unfounded	11	36	27	Not an Option
Victim Declined / Did Not Participate	23	15	6	Not an Option
Prosecution Declined	6	41	10	Not an Option
Insufficient Evidence	47	Not an Option	1	Not an Option
Other Term(s)	2	29	61	32
No Document in File or No information Provided	36	1	17	25

\* Column totals 145 owing to 23 instances with multiple reasons provided.

The most reliable record of a commander’s disposition decision if action was taken on an investigated offense is the action itself—that is, the charge sheet, Report of Result of Trial, or record of non-judicial punishment or administrative action. However, these documents are rarely provided to the MCIOs for their reporting purposes and inclusion in the investigative file. For cases in which no action is taken by the commander for an investigated criminal offense, the command disposition document may be the only record of that decision and the reason for it.

reasons for non-action include “no probable cause,” “insufficient evidence,” “prosecution declined,” “victim declined,” “unfounded,” “pre-trial diversion,” or “accepted.” The Navy and Marine Corps require case dispositions to be categorized based solely on DoD SAPRO terminology and definitions. For cases in which the commander takes no action, the classification is “command action precluded.” Cases classified as “command action precluded” require one of the following reasons to be selected on the form: “insufficient evidence,” “victim declination,” or “false or baseless.”

77 *Transcript of CRWG Preparatory Session 190–92* (Mar. 6, 2018) (testimony of Special Agent Ernest Slatinsky, U.S. Air Force Office of Special Investigations, Chief of Quality Assessments) (testimony of Mr. Robert Diederichsen, Program Management Analyst, U.S. Navy, explaining that agents input the best they can based on what they have gotten back from the command). *Id.* at 192 (testimony of Special Agent Diederichsen).

78 “Insufficient evidence” is defined by SAPRO as insufficient evidence to legally prove those elements beyond a reasonable doubt. “Unfounded,” which is discussed in detail in Section VII of this chapter, is defined by DoD and the Uniform Crime Reporting Handbook as a complaint that is determined through investigation to be false or baseless. “Probable cause” is most generally understood as reasonable grounds to believe that an offense has been committed and that the person to be identified as the offender committed it.

In addition to inconsistencies in the documentation of command disposition decisions across the Services, the Committee also noted inconsistencies and inaccuracies within each Service in preparing the command disposition reports. For example, some of the Army command disposition forms indicated that the command took action on a penetrative sexual assault, but further inquiry revealed that the command action was for a collateral or unrelated non-sexual offense. In one case reviewed by the Committee, the command action form indicated that the investigated penetrative sexual assault had a disposition of non-judicial punishment, when in fact the non-judicial punishment was for a barracks violation uncovered during the sexual assault investigation. In another case, the command disposition form indicated that the investigated penetrative sexual assault complaint resulted in preferral of charges, though in fact, no action was taken for the penetrative sexual assault offense; rather, a fraternization charge was forwarded to a summary court-martial by the command. Reviewers also found documentation indicating that no action was taken in cases in which charges were actually pending.

Further, some of the command disposition reports were internally inconsistent or even contained conflicting information. For example, a form might state in one place that action was taken for a sexual offense but in another place that there was no probable cause that the offense occurred. Case reviewers also observed that commanders taking no action on a case would sometimes provide multiple reasons for the disposition that were inconsistent or made the reasoning uncertain. Moreover, Committee member and staff reviews of investigative files showed that in almost 30% of cases, either no reason was provided on the command action report for the disposition or no command disposition report was included in the investigative file. This absence can be problematic because MCIOs must report command disposition information for criminal investigations to federal criminal history databases as well as determine the case clearance codes required for DIBRS reporting.

Though judge advocates work closely with commanders in providing advice on the appropriate disposition for a case, it is unclear whether or to what extent Service judge advocates assist commanders in preparing the command disposition documentation. Service judge advocates testified that prosecutors do not assist commanders with completing the command disposition forms, but—with the exception of the Marine Corps<sup>79</sup>—it is unclear whether the commander's staff judge advocate assists with this process.<sup>80</sup>

## ***2. Timeliness of Providing the Documentation to the MCIOs***

As discussed above, DoD policy regarding the investigation of adult sexual assault requires that the commander of the Service member who is a reported subject of a sexual assault investigation provide the MCIO, in writing, all disposition data within five business days of disposition, including

- (1) Any administrative, non-judicial punishment, or judicial action that occurs as a result of the investigation; or
- (2) A declination of command action when no action is taken.<sup>81</sup>

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79 See *Transcript of DAC-IPAD Public Meeting 325* (Apr. 20, 2018) (testimony of Major Jesse Schweig, U.S. Marine Corps, Trial Counsel Assistance Program) (stating that staff judge advocates prepare the form for the commander).

80 *Id.* at 326 (testimony of Captain Michael Luken, U.S. Navy, Director, U.S. Navy Trial Counsel Assistance Program) (stating that prosecutors don't touch the command disposition form and that it is completed by command); *Transcript of CRWG Preparatory Session 46* (Mar. 6, 2018) (testimony of Lieutenant Colonel Rebecca Farrell, U.S. Army, Special Victim Prosecutor) (stating that commanders, and not the judge advocates, fill out the Army Form 4833 command disposition form).

81 DoDI 5505.18, *supra* note 52, ¶ 2.2.e.

Notwithstanding the current DoD policy, an MCIO representative reported to the DAC-IPAD that investigators are not receiving the disposition documentation in a timely manner and that frequently they have to track it down. As a result, the MCIOs are delayed in closing their cases and providing input to DIBRS and the CJIS databases.<sup>82</sup>

### C. Discussion

A uniform command action form with standardized terminology, as required by the FY19 NDAA, will go a long way toward resolving the inconsistencies and confusion that currently exist in memorializing and meeting federal reporting requirements related to command disposition decisions. However, in deciding on that terminology, DoD and the Services should align the terms with the primary function for which law enforcement—the MCIOs—must use the disposition information: CJIS and DIBRS federal database reporting, which requires the use of recognized legal and law enforcement terminology.

It is important for judge advocates and commanders to understand the purpose of command disposition documents and how they are used by the MCIOs, and for judge advocates to have more involvement in the process. Case disposition documentation, which in federal and state jurisdictions is handled by law enforcement and district attorney's offices, directly affects the information available in federal criminal databases about Service members who are the subject of a criminal investigation, yet military prosecutors take a surprisingly hands-off approach to assisting commanders in recording their official action in criminal justice matters. Absent assistance from judge advocates, commanders alone must determine which disposition categories and reasons most accurately match the action taken, wading through often complex and confusing terminology. Judge advocates perform legal analyses of all sexual assault investigations in advising commanders about appropriate dispositions; their involvement should extend to assisting commanders in filling out disposition documentation to ensure that the commander's decision and the reasons for that decision are recorded with accuracy and uniformity. A better understanding of how command disposition documentation is used by the MCIOs would also help judge advocates and commanders understand the importance of providing this information to the MCIOs in a timely manner.

### D. Findings and Recommendations

**Finding 14:** Accurate and uniform documentation of a commander's disposition decision, the reason for the decision, and any disciplinary action taken for violations of the Uniform Code of Military Justice is essential to ensure that military criminal investigative agencies provide accurate and timely reports of crime data to federal law enforcement agencies and databases.

**Finding 15:** The command disposition/action reports that are found in investigative files are often unclear, incomplete, inaccurate, and inconsistent within and across the Services.

**Finding 16:** Command disposition/action documentation found in investigative case files sometimes conflicts with the actual action taken by the command.

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82 *Transcript of CRWG Preparatory Session 168* (Mar. 6, 2018) (testimony of Special Agent Ernest Slatinsky, U.S. Air Force Office of Special Investigations, Chief of Quality Assessments).

**Finding 17:** Command disposition/action reports that are found in investigative files include terminology inconsistent with MCIO federal database reporting requirements; to meet these federal reporting requirements, investigators must therefore interpret the terms used, leading to inconsistent and inaccurate database reporting.

**Finding 18:** MCIOs need the command disposition/action report to officially close their cases and make required federal reports to DIBRS and federal criminal history databases.

**Finding 19:** Judge advocates testified that they do not routinely assist commanders in completing command disposition/action reports.

**Finding 20:** Command disposition/action reports often are not submitted to the MCIOs within five days of command action, as required by DoD policy.

**DAC-IPAD Recommendation 5:** In developing a uniform command action form in accordance with section 535 of the FY19 NDAA, the Secretary of Defense (and the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) should establish a standard set of options for documenting command disposition decisions and require the rationale for those decisions, including declinations to take action.

The Secretary of Defense (and the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) should ensure that the standard set of options for documenting command disposition decisions is based on recognized legal and investigatory terminology and standards that are uniformly defined across the Services and accurately reflect command action source documents.

**DAC-IPAD Recommendation 6:** The Secretary of Defense (and the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) should require that judge advocates or civilian attorneys employed by the Services in a similar capacity provide advice to commanders in completing command disposition/action reports in order to make certain that the documentation of that decision is accurate and complete.

## VII. UNFOUNDED DETERMINATIONS

### A. Introduction and Background

As discussed earlier, DoD law enforcement agencies are required to report crime data for inclusion in federal crime databases. Using DIBRS, investigators must identify how the investigation into each offense investigated was resolved—or “cleared”—and indicate the reason why it was resolved in that manner. Standard reasons for clearing a case include “arrest or arrest equivalent,” “prosecution declined,” and “victim refused to cooperate.”<sup>83</sup> One of the clearance categories listed in the DoD policy for DIBRS is “unfounded.”<sup>84</sup> In contrast, NIBRS, the FBI’s system, has no separate category of “unfounded,” and an incident that is unfounded will not be entered into

83 DEP’T OF DEF. MANUAL 7730.47-M-VOLUME 1, DEFENSE INCIDENT-BASED REPORTING SYSTEM (DIBRS): DATA SEGMENTS AND ELEMENTS, encl. 4, Table 1 (Dec. 7, 2010, Incorporating Change 2, June 29, 2018). NIBRS clearance categories are “cleared by arrest” or “cleared by exceptional means.” The reasons for clearing by exceptional means include the other categories listed in the DoD Manual. See U.S. Department of Justice, Federal Bureau of Investigation, UNIFORM CRIME REPORTING HANDBOOK, NATIONAL INCIDENT-BASED REPORTING SYSTEM, VOLUME 1: DATA COLLECTION GUIDELINES 70 (2000).

84 *Id.* at 83.

the system. If such an incident had already been entered into NIBRS, it will be deleted from the system and will not be reported as a criminal incident.<sup>85</sup>

## **B. Analysis and Testimony**

### ***1. Definitions of “Unfounded”***

Throughout DoD and the Services, the term “unfounded” appears to have differing definitions and be used in different ways.

DoD Definition. The DoD DIBRS manual defines “unfounded” as “[a] complaint that is determined through investigation to be false or baseless. In other words, no crime occurred.” The DoD definition is substantially the same as that found in the Uniform Crime Reporting (UCR) Handbook used by the FBI.<sup>86</sup> If the investigation reveals that no crime occurred or was attempted, the offense should be reported as “unfounded” in DIBRS.<sup>87</sup>

DoD Instruction 5505.03, “Initiation of Investigations by Defense Criminal Investigative Organizations,” specifies the point at which MCIOs may clear a case as unfounded in accordance with the terms and definitions used in DIBRS. It directs that MCIOs may only do so at the close of a case, *after* the subject’s commander has decided how to dispose of the offenses investigated.<sup>88</sup> The prohibition on MCIO investigators making investigative conclusions (i.e., founded or unfounded) in the investigative reports presented to commanders is intended to avoid the potential that an investigator’s written assessment might bias the case disposition, something that is solely within a commander’s authority to decide.

Army Definition. While the DoD DIBRS manual also defines unfounded as “false or baseless,” the Army conflates this definition with the idea of probable cause. According to a memorandum of agreement (MOA) between the Office of the Judge Advocate General and the U.S. Army Criminal Investigation Command, judge advocates agree to provide Criminal Investigation Command (CID) with a “probable cause opine” for purposes of DIBRS/UCR reporting and other reporting purposes.<sup>89</sup> This memorandum states that an opinion of no probable cause may be given only in cases in which the complaint is shown to be false or when there is a “failure to substantiate all elements of the offense,” mirroring the DIBRS/UCR definition of unfounded.<sup>90</sup>

DoD SAPRO Definition. DoD Instruction 6495.02, “Sexual Assault Prevention and Response (SAPR) Program Procedures” (hereinafter DoD SAPRO instruction), uses the DIBRS/UCR definition of unfounded in the context of reporting sexual assault case disposition information in DoD SAPRO’s annual reports to Congress. It states, “Unfounded allegations reflect a determination *by command*, with the supporting advice of a qualified legal officer, that the allegations made against the alleged offender did not occur nor were attempted. These cases are

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85 *Transcript of CRWG Preparatory Session 41* (July 25, 2018) (testimony of Mr. Scott Myers, Criminal Justice Information Services (CJIS), Federal Bureau of Investigation).

86 U.S. Department of Justice, Federal Bureau of Investigation, CRIMINAL JUSTICE INFORMATION SERVICES (CJIS) DIVISION UNIFORM CRIME REPORTING (UCR) PROGRAM: SUMMARY REPORTING SYSTEM USER MANUAL 175 (2013).

87 *Id.*

88 DoDI 5505.03, *supra* note 52, at encl. 2, ¶ 7a.

89 MEMORANDUM OF AGREEMENT BETWEEN THE OFFICE OF THE JUDGE ADVOCATE GENERAL AND THE U.S. ARMY CRIMINAL INVESTIGATION COMMAND (CID), LEGAL COORDINATION FOR CID LAW ENFORCEMENT REPORTS (June 5, 2018).

90 *Id.*

either false or baseless” (emphasis added).<sup>91</sup> The instruction further explains that cases are considered “false” when “Evidence obtained through an investigation shows that an offense was not committed nor attempted by the subject of the investigation.”<sup>92</sup> Cases are labeled “baseless” when “Evidence obtained through an investigation shows that the alleged offense did not meet at least one of the required elements of a UCMJ offense constituting the SAPRO definition of sexual assault or was improperly reported as a sexual assault.”<sup>93</sup> According to DoD SAPRO, a determination that a case is unfounded “precludes” a commander from taking disciplinary action.<sup>94</sup>

## 2. Varying Practices for Unfounding Cases

While the MCIOs are responsible for reporting incident clearance information in DIBRS, it is difficult to determine who bears responsibility for making the actual decision to unfound a case.<sup>95</sup> For example, the same DoD SAPRO policy that includes a category for cases “unfounded by command” also provides that cases may be classified as “unfounded by MCIO,” without noting why these different categories exist.<sup>96</sup> These provisions suggest that both commanders and MCIOs have the authority to declare a reported offense unfounded. Further highlighting the confusion, a DoD SAPRO official informed the DAC-IPAD that while Army CID investigators used to make the unfounding decision—meaning the case was not provided to a commander for disciplinary action—Army CID has changed its procedures to make them consistent with those of the other Services and now sends the cases to the commander for the unfounding decision, without offering an opinion on whether the case should be unfounded.<sup>97</sup>

As discussed earlier, the reasons available on the command disposition forms used to explain why no action was taken do not always align with the clearance reasons listed as options in DIBRS, and investigators testified that they find it difficult to translate the information from command disposition reports to an appropriate DIBRS case clearance category. The Committee compared the case clearance category in investigations reported in DIBRS with the commanders’ disposition determination as recorded in the command disposition reports sent to the MCIOs. The Committee’s review of 122 investigative files in which no action was taken for the penetrative sexual assault revealed that the command classified 11 cases (10%) as unfounded. However, for this same set of cases, MCIOs categorized 36 cases (30%) as unfounded in DIBRS.

Testimony received by the Committee illustrates that confusion also exists about a judge advocate’s role in unfounding a case. One judge advocate explained that while attorneys assess whether probable cause exists to believe an alleged offender committed a criminal offense, they do not assist CID in determining whether “unfounded” is the appropriate code for a case in DIBRS.<sup>98</sup> However, another judge advocate considered the

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91 DoDI 6495.02, *supra* note 53, Appendix to encl. 12, ¶¶ c, d, and f.

92 *Id.* at ¶ d(1).

93 *Id.* at ¶ d(2); DoDI 5505.03, *supra* note 52, ¶ 7.a.

94 DoDI 6495.02, *supra* note 53, Appendix to encl. 12, ¶¶ c and d.

95 *Id.* at ¶ d.

96 *Id.* at ¶ f.

97 *Transcript of DAC-IPAD Public Meeting 313–14* (Apr. 28, 2017) (testimony of Dr. Nathan Galbreath, Deputy Director, Sexual Assault Prevention and Response Office, U.S. Department of Defense).

98 *Transcript of CRWG Preparatory Session 45–46* (Mar. 6, 2018) (testimony of Lieutenant Colonel Rebecca Farrell, U.S. Army, Special Victim Prosecutor).

unfounding of a case to be very similar to a judge advocate's assessment as to whether probable cause exists to believe a sexual assault was committed.<sup>99</sup>

### **3. Civilian Law Enforcement Practices**

In civilian jurisdictions, unlike in the military, the unfounding decision is typically made by law enforcement.<sup>100</sup> In its June 2014 report to Congress, the Response Systems to Adult Sexual Assault Crimes Panel (RSP) compared the process for unfounding cases in the military with the various processes for unfounding cases in civilian jurisdictions. The RSP observed that some civilian police departments require approval by the investigator's supervisor or review by the prosecutor before a case could be unfounded.<sup>101</sup> The RSP found that a best practice among civilian law enforcement agencies was to require supervisory review of unfounded cases; when the percentage of unfounded cases rises above a specified point, the supervisor reviews patterns and investigative practices to ensure that only false or baseless cases are being unfounded.<sup>102</sup>

The Comparative Systems Subcommittee of the RSP stated that in some civilian jurisdictions, the responding police officer or detective can unfound a case before it ever reaches a prosecutor; as a result, the civilian prosecution rate does not account for all reported sexual assaults. By contrast, the Subcommittee noted, the Services are required to account for every reported sexual assault through disposition.<sup>103</sup>

A supervisory sex crimes detective with the Baltimore Police Department (BPD) testified to the DAC-IPAD that Baltimore previously had an unfounded rate for sex crimes that was much higher than the national average.<sup>104</sup> One of the reasons for its high unfounded rate was that responding patrol officers often were coding sexual assault reports as unfounded prior to sexual assault investigators being involved.<sup>105</sup> In response, in 2000 the BPD created a policy that patrol officers are not allowed to unfound a case at the scene and a detective must be called for every sexual assault report.<sup>106</sup> Subsequently, it added the requirement that a sexual assault review team composed of a representative from the mayor's office, a state's attorney, police officials, and others must review a case at the conclusion of the investigation before it can be unfounded, though the ultimate decision rests with BPD.<sup>107</sup>

### **4. Response Systems to Adult Sexual Assault Crimes Panel (RSP) Recommendation**

The Comparative Systems Subcommittee of the RSP found that while DoD uses the same definition of unfounded as the UCR, the term is applied incorrectly; moreover, the Services use different definitions and give authority for making the decision to different entities.<sup>108</sup> The Subcommittee called for formalizing standards

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99 *Transcript of DAC-IPAD Public Meeting 92-93* (Apr. 28, 2017) (testimony of Colonel Christopher Kennebeck, U.S. Army, Chair, Criminal Law Department, The Judge Advocate General's Legal Center and School).

100 RSP REPORT, *supra* note 45, at 121.

101 *Id.*

102 *Id.*

103 RSP REPORT, *supra* note 45, at ANNEX A: REPORT OF THE COMPARATIVE SYSTEMS SUBCOMMITTEE 9.

104 *Transcript of DAC-IPAD Public Meeting 81* (Oct. 19, 2018) (testimony of Major Steve Hohman, Baltimore Police Department).

105 *Id.*

106 *Id.* at 82.

107 *Id.* at 83–84, 100.

108 RSP REPORT, *supra* note 45, at ANNEX A: REPORT OF THE COMPARATIVE SYSTEMS SUBCOMMITTEE 17.

and procedures to “reduce conflation and confusion of various definitions for terms such as unfounded, substantiated, and probable cause.”<sup>109</sup> Subcommittee members also recommended that the Secretary of Defense direct the Service Secretaries to “standardize the process for determining a case is unfounded.”<sup>110</sup> They specifically recommended that the decision to unfound reports should be made by the MCIOs in coordination with trial counsel, using the UCR standard of “false or baseless.”<sup>111</sup>

The RSP adopted the Comparative Systems Subcommittee’s recommendation, but with significant modifications. The RSP recommended that the Secretary of Defense direct the Service Secretaries to “standardize the process for determining a case is unfounded” and use the UCR standard of “false or baseless,” but did not recommend that the decision to unfound reports be made by the MCIOs.<sup>112</sup> Their discussions surrounding this recommendation suggest that RSP members believed that the commander should at least have the opportunity to review a case prior to the unbounding decision, and should have the recommendation of the MCIOs as to whether it should be unfounded.<sup>113</sup>

### C. Discussion

The term “unfounded” is a crime reporting category used by criminal investigators or law enforcement personnel when reporting incident clearance reasons in DIBRS. In determining an appropriate disposition of a case, attorneys use the term “probable cause,” meaning reasonable grounds to believe that an offense was committed and the subject committed it. These are different terms with different meanings and different purposes, applied by different entities. The Army’s use of “probable cause” to discuss unfounded decisions in DIBRS deviates from the DIBRS/UCR definition of unfounded as “false or baseless” and introduces needless confusion by conflating a legal standard with a law enforcement clearance category in a crime reporting database.

In addition to the confusion about the definition and usage of the term “unfounded,” there also appears to be confusion regarding when and how the commander makes this determination and who is supposed to advise the commander in doing so. As noted by the RSP Subcommittee and discussed by investigators appearing before the DAC-IPAD, unbounding decisions in civilian law enforcement agencies are typically made by law enforcement personnel, with some jurisdictions requiring additional oversight by supervisors or outside agencies, such as prosecutors.

DoD regulations prevent the MCIOs from making an investigative conclusion, such as whether the case should be founded or unfounded. Military prosecutors testified that they do not use the term “unfounded” and do not assist the MCIOs in filling out the DIBRS incident clearance codes. The reasons provided on command disposition documents for the action taken do not closely match the clearance reasons in DIBRS, requiring investigators to translate the reason on the command form into the appropriate DIBRS category.

The documentation used by the commands to memorialize their disposition determinations does not allow for clear, simple translation of that determination into the appropriate clearance code. This confusion likely

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109 *Id.* at 6.

110 *Id.* at 17.

111 *Id.*

112 *Id.* at 41.

113 *Transcript of RSP Public Meeting 138* (May 29, 2014) (comment of Chair Barbara Jones) (“Well, I think once the commander plays his role, reviews the unfounded decision of the military investigator and approves it, it is the same thing as a final disposition.”).

accounts for the wide disparity between the number of cases determined by commanders to be unfounded and the much larger number reported as unfounded by the MCIOs in DIBRS. The process for determining whether a case is unfounded, and who makes this decision, should be further examined and clarified.

#### **D. Finding**

**Finding 21:** There is significant confusion among investigators, judge advocates, and commanders as to what the terms “probable cause” (reasonable grounds to believe) and “unfounded” (false or baseless) mean, when and by whom probable cause and unfounded determinations are made, and how they are documented throughout the investigative process.

### **VIII. FINGERPRINT COLLECTION AND SUBMISSION PROCESSES FOR FEDERAL CRIMINAL HISTORY REPORTING**

#### **A. Introduction and Background**

As discussed above, MCIOs, like their state and federal counterparts, are required to report information on offenders’ criminal history for inclusion in the National Crime Information Center (NCIC) criminal history database.<sup>114</sup> This history is defined as information on “arrests; detentions; indictments; informations or other formal criminal charges; and any disposition arising therefrom”; the data include fingerprints and information on acquittal and sentencing.<sup>115</sup> Federal law requires that criminal history information be collected, stored, and disseminated in a manner that ensures accuracy, completeness, currency, and integrity and protects individual privacy.<sup>116</sup> Authorized users can then access criminal history information in the NCIC to make decisions about hiring and licensing individuals and allowing them to purchase firearms.<sup>117</sup>

The collection and submission of fingerprints and final disposition reports by the military for entry into the FBI databases became a subject of national attention and concern when a former Air Force member, Devin Kelley, shot and killed 26 people and wounded 22 others at the First Baptist Church in Sutherland Springs, Texas, on November 5, 2017.<sup>118</sup> Investigation into the shooting revealed that Kelley had a general court-martial conviction for assault and had received a bad-conduct discharge from the Air Force in 2014.<sup>119</sup> His offense required Air

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114 DEP’T OF DEF. INSTR. 5505.11, FINGERPRINT CARD AND FINAL DISPOSITION REPORT SUBMISSION REQUIREMENTS [hereinafter DoDI 5505.11], ¶ 1 (July 21, 2014, Incorporating Change 2, Mar. 30, 2017). MCIOs are the U.S. Army Criminal Investigative Command (CID), Naval Criminal Investigative Service (NCIS), and Air Force Office of Special Investigations (AFOSI); they are typically responsible for investigating more serious crimes. MCIOs are a subset of the investigative organizations referred to in DoDI 5505.11. DoDI 5505.11 does not apply to the Coast Guard Investigative Services, an entity under the Department of Homeland Security.

115 Criminal Justice Information Systems, 28 C.F.R. § 20.3(d) (2017). See also DoDI 5505.11, *supra* note 114, at Glossary. Throughout this report, the term “fingerprints” encompasses not only the actual fingerprints on the fingerprint card, or its electronic equivalent, but also the criminal history information contained therein.

116 Criminal Justice Information Systems, 28 C.F.R. § 20.1 (2017).

117 Federal Bureau of Investigation, *Arrest Disposition Submission*, <https://www.fbi.gov/services/cjis/fingerprints-and-other-biometrics/arrest-disposition-submission> (stating that “[a] complete Identity History Summary is important to Law Enforcement for investigative purposes, as well as for non-criminal justice background checks for employment, licensing, adoption, citizenship and firearm purchases.”).

118 Dep’t of Def., Office of Inspector General, REPORT OF INVESTIGATION INTO THE UNITED STATES AIR FORCE’S FAILURE TO SUBMIT DEVIN KELLY’S CRIMINAL HISTORY INFORMATION TO THE FEDERAL BUREAU OF INVESTIGATION 5 (2018) [hereinafter DoDIG 2019-030], available at [https://media.defense.gov/2018/Dec/07/2002070069/-1/-1/1/DODIG-2019-030\\_REDACTED.PDF](https://media.defense.gov/2018/Dec/07/2002070069/-1/-1/1/DODIG-2019-030_REDACTED.PDF).

119 *Id.* at 30.

Force investigators to report his criminal history to the NCIC. Unfortunately, neither his fingerprints nor a final disposition report of the conviction was submitted to the FBI for inclusion in the criminal history database.<sup>120</sup> Before Kelley’s purchase of each firearm used in the assault, a criminal history check was conducted by the seller, but his criminal history was not in the database.<sup>121</sup> Kelley’s conviction should have prevented him from buying a firearm from a licensed dealer.<sup>122</sup>

Committee members became interested in the process of collecting and submitting fingerprints when they noted during their review of criminal investigative files that investigators took subject fingerprints early in the investigation and submitted them to federal databases at various times throughout it. The Committee observed that in the military, the fingerprinting processes did not seem to be linked to a specific legal or law enforcement action, whereas in federal and many state jurisdictions, arrest or indictment is the stage at which fingerprint samples are taken.<sup>123</sup> Another area of concern was the lack of documentation in the investigative file regarding coordination with a judge advocate about probable cause before fingerprints were submitted to the federal database. Finally, the members noted that the information being provided to federal criminal history databases about the final disposition of criminal offenses was not always accurate.<sup>124</sup>

## B. Analysis and Testimony

### 1. Collection of Fingerprints

DoDI 5505.11, “Fingerprint Card and Final Disposition Report Submission Requirements,” provides little guidance on the collection of fingerprints for purposes of submission to the federal database: it states only that fingerprints and other required criminal history information will be obtained from military subjects under investigation by an MCIO, recorded on a Department of Justice Form FD-249 “Arrest and Institution Fingerprint Card,” and electronically submitted to the NCIC.<sup>125</sup> It does not specify the standard on which collection is based, the person responsible for collecting the fingerprints and assessing whether the standard for collection has been met, and the time when the fingerprints should be collected.

During their review of criminal investigative files, Committee members observed that criminal investigators generally collect a subject’s fingerprints during the first subject interview—a point unrelated to charging the subject with a crime.<sup>126</sup> In contrast, members noted, in the federal and state systems fingerprints are generally taken at the time of arrest, whether by indictment or criminal complaint.<sup>127</sup>

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120 *Id.* at 1–2.

121 *Id.* at 30–31.

122 *Id.* at 1.

123 *Transcript of CRWG Preparatory Session* 114–15 (Aug. 23, 2018).

124 *Transcript of DAC-IPAD Meeting* 300 (Jan. 25, 2019).

125 DoDI 5505.11, *supra* note 114, at encl. 4, ¶ (b)-(c). The Department of Justice Form FD-249, “Arrest and Institution Fingerprint Card,” is the form used to transmit criminal history data, including fingerprints, to the CJIS, NCIC, for inclusion in the federal criminal history database. *See also* Federal Bureau of Investigation, GUIDELINES FOR PREPARATION OF FINGERPRINT CARDS AND ASSOCIATED CRIMINAL HISTORY INFORMATION (Sept. 30, 2016), available at <https://www.fbi.gov/file-repository/guidelines-for-preparation-of-fingerprint-cards-and-association-criminal-history-information.pdf/view>.

126 *Transcript of CRWG Preparatory Session* 115 (Aug. 23, 2018) (In discussing the military fingerprinting processes, Ms. Martha Bashford, CRWG member, noted, “The problem I see is that it’s not really an arrest equivalent because it happens often early in the investigation. The investigation still keeps going on, there doesn’t seem to be any . . . impact on . . . the suspect.”).

127 *Transcript of CRWG Preparatory Session* 114–26 (Aug. 23, 2018).

Members also observed that in the military, fingerprints are routinely collected before a legal advisor is consulted as to whether there is probable cause that the subject committed a crime.<sup>128</sup> In some cases, investigators submit the date of collection in the date of arrest block on the fingerprint form, leaving the question open as to whether a probable cause to arrest standard is used or should be used to trigger fingerprint collection.<sup>129</sup>

## ***2. Probable Cause Determinations and Submission of Fingerprint Cards to the FBI***

DoDI 5505.11 requires that MCIOs submit offender criminal history information to the NCIC when probable cause “exists to believe that the person has committed” a qualifying offense, including sexual assault—although submission can occur no earlier than the subject’s interview or apprehension.<sup>130</sup> Probable cause, defined as “reasonable grounds to believe that an offense has been committed and that the person to be identified as the offender committed it,”<sup>131</sup> is to be determined after coordination with the legal advisor.<sup>132</sup> Under DoD policy, coordination with the legal advisor is required to be documented in the investigative file.<sup>133</sup>

DoD policy does not address what coordination with the legal advisor should include—for example, whether the legal advisor should discuss what charge is appropriate given the facts, which elements are met, whether there is a reasonable belief that a specific offense occurred and this subject committed it, or whether more investigation is necessary before a probable cause determination can be made. Several Services go beyond the DoD requirement of mere coordination between the investigator and legal advisor and specify that there must be a determination

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128 DoDI 5505.11, *supra* note 114, at ¶ 3 (requiring a probable cause determination to be made in conjunction with a judge advocate as a prerequisite to submission of fingerprints to the federal database).

129 The military investigator’s confusion as to the military equivalent of the civilian date of arrest for purposes of the federal criminal history database is shared by members of the CRWG. See *Transcript of CRWG Preparatory Session 97* (Aug. 23, 2018) (comment of Ms. Martha Bashford, CRWG member) (“I think even the arrest equivalent is cloudy because I see a lot of cases where ultimately there’s no action taken, but the DNA sample is taken and the prints are taken on a [probable cause] finding.”). See also Federal Bureau of Investigation, *GUIDELINES FOR PREPARATION OF FINGERPRINT CARDS AND ASSOCIATED CRIMINAL HISTORY INFORMATION 5* (Sept. 30, 2016), available at <https://www.fbi.gov/file-repository/guidelines-for-preparation-of-fingerprint-cards-and-association-criminal-history-information.pdf/view> (noting that one should enter the date the subject was arrested in the date of arrest block).

130 DoDI 5505.11, *supra* note 114, at encl. 4, ¶ 1c(1).

131 DoDI 5505.11, *supra* note 114, at Glossary. The definition is drawn from DoD Manual 7730.47-M-Volume 1, “Defense Incident-Based Reporting System (DIBRS): Data Segments and Elements,” which, in part, establishes guidance for entering data into a defense central repository of criminal incident data for federal criminal incident reporting in compliance with the UCR and the Brady Handgun Violence Prevention Act of 1993, as amended. Enclosure 3, paragraph 2(c), prohibits reporting of any personally identifiable information (PII) “without a ‘probable cause’ determination that there are reasonable grounds to believe that an offense has been committed and that the person to be identified as the offender committed it.” That paragraph also establishes the events that “shall be construed as the equivalent of a probable cause determination, and that shall trigger the requirement to report PII as Arrestee/Offender data”: apprehension, custody, pretrial confinement, prefferal of charges, imposition of non-judicial punishment, approval of separation from the Service, and conviction by civilian court. DEP’T OF DEF. MANUAL 7730.47-M-VOLUME 1, DEFENSE INCIDENT-BASED REPORTING SYSTEM (DIBRS): DATA SEGMENTS AND ELEMENTS, encl. 3, ¶ 2(c) (Dec. 7, 2010, incorporating Change 2, June 29, 2018); see also 10 U.S.C. § 807b and 809 (UCMJ, Art. 7b and 9); MANUAL FOR COURTS-MARTIAL, UNITED STATES (2019 ed.) [hereinafter 2019 MCM], Rule for Courts-Martial [hereinafter R.C.M.] 302(a) &(c) (defining apprehension as taking a person into custody based on probable cause to apprehend which exists when there are reasonable grounds to believe that an offense has been committed and the person to be apprehended committed it).

132 DoDI 5505.11, *supra* note 114, at ¶ 3 (requiring submission of offender criminal history data based on a “probable cause standard determined in conjunction with the service Staff Judge Advocate (SJA) or other legal advisor[.]”). Earlier versions of DoDI 5505.11 made command initiation of military judicial proceedings or command action in non-judicial proceedings the trigger for submission of criminal history data to the NCIC. DEP’T OF DEF. INSTR. 5505.11, FINGERPRINT CARD AND FINAL DISPOSITION REPORT SUBMISSION REQUIREMENTS ¶ 6.2.1 (June 20, 2006). The June 20, 2006, DoD Instruction was subsequently changed to allow submission as early as the subject’s statement upon a finding of probable cause determined in conjunction with the legal advisor. DEP’T OF DEF. INSTR. 5505.11, FINGERPRINT CARD AND FINAL DISPOSITION REPORT SUBMISSION REQUIREMENTS ¶ 4 (July 9, 2010, Incorporating Change 1, May 3, 2011).

133 DoDI 5505.11, *supra* note 114, at encl. 4, ¶ 1c(1).

of probable cause by the legal advisor prior to submission of fingerprints to the federal database.<sup>134</sup> However, in its report on Devin Kelley, issued December 6, 2018, the DoD Office of Inspector General (OIG)—which has the authority to establish policy for the MCIOS—did not find it problematic that the investigators and legal advisors failed to coordinate on the specific question of whether probable cause existed to believe the subject had committed the offense.<sup>135</sup> Instead, the DoD OIG implied that a general case briefing to the legal advisor or evidentiary search warrant consultations with a legal advisor met the coordination requirement.<sup>136</sup>

During their review of criminal investigative files, members collected data from each file on whether a judge advocate had made a probable cause determination for purposes of submitting fingerprints to the NCIC.<sup>137</sup> Generally, this data point was recorded in the investigative case files in one of two ways. In most cases there would be an agent note or a reference in the report of investigation indicating that on a specific day the agent consulted with a judge advocate and the judge advocate gave an opinion as to whether there was probable cause or whether additional investigation was required before he or she would give an opinion on probable cause. Sometimes when the probable cause opinion was deferred, no follow-up with the judge advocate on probable cause was reflected in the investigative case file. The other way in which coordination with a judge advocate appeared in the investigative case files was a written memorandum signed by a judge advocate stating the facts of the case and giving an opinion as to whether there was probable cause. In 20% (33) of the 164 cases from the random sample, “no action” and “preferred” investigative files did not indicate that a probable cause determination was made by a judge advocate. Such files usually lacked any sign of a probable cause determination by the investigative agent as well.

Several senior judge advocates with expertise in sexual assault investigations testified that in the absence of DoD policy requiring judge advocates’ coordination on probable cause prior to fingerprint submission, judge advocates would not give a probable cause opinion until the investigation was completed.<sup>138</sup> Judge advocates also noted that there are different points during the investigation when they determine whether probable cause exists for the purpose of submitting fingerprints. One judge advocate stated that the probable cause determination for fingerprinting is made around the time that the investigator interviews the subject.<sup>139</sup> A Coast Guard judge advocate stated that fingerprints are submitted at the time of referral, but a Marine judge advocate said that

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134 *Transcript of CRWG Preparatory Session* 71–73, 113–14 (Mar. 6, 2018) (testimony of Colonel Christopher Brown, U.S. Air Force, Chief, Military Justice Division) (noting that the Air Force uses a form for the judge advocate to record a probable cause determination); *id.* at 112–13 (testimony of Lieutenant Colonel Farrell, U.S. Army Special Victim Prosecutor, Fort Campbell) (noting that the Army requires the legal advisor to give the investigator a probable cause opinion).

135 DoDIG 2019-030, *supra* note 118, at 10, 13, 50–54. While noting that the AFOSI’s investigative documentation did not contain evidence indicating a legal advisor made a probable cause determination and determining that policy required legal coordination, none of the analysis, conclusions, or recommendations further discuss this failure.

136 *Id.* at 64–71. Neither legal advisors nor investigators recalled discussing probable cause that Kelley committed the offense of assault. The report references consultations between investigators and legal advisors on search warrants and general weekly case updates and concludes that fingerprints should have been submitted. Analysis of probable cause focused primarily on the agent’s belief at the time of the subject interview as to whether probable cause existed, without any consideration of coordination with a legal advisor and how such coordination might influence the agent’s probable cause determination. The DAC-IPAD does not dispute that at some point during the investigations and conviction of Kelley, fingerprints and a final disposition report should have been submitted to the federal criminal history database.

137 These observations are based solely on the portions of the investigative file available for our review. As discussed earlier, not all Services provided investigator notes for our review in all cases.

138 *Transcript of CRWG Preparatory Session* 113–20 (Mar. 6, 2018) (testimony of Colonel Christopher Brown, U.S. Air Force, Chief, Military Justice Division; testimony of Lieutenant Colonel Farrell, U.S. Army Special Victim Prosecutor, Fort Campbell).

139 *Id.* at 74–75 (testimony of Colonel Christopher Brown, U.S. Air Force, Chief, Military Justice Division).

fingerprints are submitted before referral.<sup>140</sup> At the same meeting, a senior MCIO with expertise in sexual assault investigations testified that he asks judge advocates for probable cause determinations near the end of the investigation.<sup>141</sup>

DoD OIG has published several reports on military submission of fingerprints and other criminal history information to the FBI. A December 4, 2017, DoD OIG report found that a significant percentage of military fingerprint cards and final disposition reports were missing from the FBI databases. As a result, DoD OIG recommended that the Services verify their compliance with fingerprint card requirements and conduct comprehensive reviews of the criminal history reporting programs to ensure that policy, training, and processes are consistent with DoDI 5505.11.<sup>142</sup> All Services agreed with the recommendations and reported that they are currently updating and revising their policies. DoD is also in the process of revising DoDI 5505.11.<sup>143</sup> The DoD OIG report on the Kelley case found that Air Force law enforcement failed to submit Kelley's fingerprints to the FBI on four separate occasions.<sup>144</sup> DoD OIG determined that there was a lack of understanding in the Air Force about when to submit fingerprints to the FBI.<sup>145</sup>

### **3. Final Disposition Reports**

MCIOs are required to submit disposition information on Department of Justice (DOJ) Form R-84, titled the "Final Disposition Report," for each charge submitted to the federal database on the FD-249 fingerprint card.<sup>146</sup> The final disposition information must be submitted within 15 calendar days after the final disposition is made.<sup>147</sup> According to federal regulations, disposition data must include specific information on the outcome of the proceedings, such as whether the subject was convicted of the submitted offense, convicted of a lesser charge, or acquitted of the charge; the sentence imposed for the submitted offense; or information that a prosecutor has elected not to commence criminal proceedings.<sup>148</sup>

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140 *Transcript of CRWG Preparatory Session* 116–20 (Mar. 6, 2018) (testimony of Major Clare Hodge III, U.S. Marine Corps, Deputy Branch Head, Military Justice Branch; testimony of Commander Cassie Kitchen, U.S. Coast Guard, Chief, Military Justice and Command Advice).

141 *Transcript of CRWG Preparatory Session* 150–53 (Mar. 6, 2018) (testimony of Mr. Clarence Joubert III, U.S. Army, Supervisory Special Agent and Program Manager for the Special Victim Unit).

142 Dep't of Def., Office of Inspector General, *EVALUATION OF FINGERPRINT CARD AND FINAL DISPOSITION REPORT SUBMISSIONS BY MILITARY SERVICE LAW ENFORCEMENT ORGANIZATIONS i–ii* (2017), available at <https://media.defense.gov/2017/Dec/08/2001854487/-1/-1/1/DODIG-2018-035.PDF>.

143 Email from Steven A. Knight, Chief, Investigative Policy, DoD OIG, to Jan Chayt, DAC-IPAD Investigator (Dec. 17, 2018) (on file with DAC-IPAD staff) (confirming that DoD OIG is in the process of updating DoDI 5505.11).

144 DoDIG 2019-030, *supra* note 118, at 61.

145 *Id.* at 67, 71, 76, 108–16.

146 DoDI 5505.11, *supra* note 114, at encl. 4, ¶ 1c. See also Federal Bureau of Investigation, *Arrest Disposition Submission*, <https://www.fbi.gov/services/cjis/fingerprints-and-other-biometrics/arrest-disposition-submission> ("The FBI defines a disposition as the formal or informal conclusion of an arrest or charge at whatever stage it occurs in the criminal justice system. A disposition reports the court's findings and can include information as to whether an arrest charge has been modified or dropped.").

147 *Id.* at ¶ 1c(3). DoDI 5505.11 addresses only reporting final disposition of military judicial or non-judicial proceeding; approval of discharges, retirements, or resignations in lieu of court-martial; and discharges resulting in an other than honorable characterization of service. Despite the specific 15-day reporting mandate for these dispositions, no reporting mandate is provided for other types of dispositions, including cases in which there is "no action" or other administrative action taken on the sexual assault offense.

148 Criminal Justice Information Systems, 28 C.F.R. § 20.3 (2017). While Title 28 refers to the prosecutor electing not to commence criminal proceedings, it is the commander in the military that has the authority to elect not to commence criminal proceedings. Title 28 also identifies instances in which the police elect not to refer a matter to a prosecutor as a disposition. However, DoD policy requires all sexual assault cases to be

Unlike the federal regulations, which expressly state that electing not to commence criminal proceedings is an option for disposition, DoD policy does not provide any examples or instructions for documenting “no action” or “administrative action only” cases.<sup>149</sup> In addition, even though the Committee’s review of investigative files found that commanders rarely took action for a lesser included offense but frequently took action for a different, non-sexual offense, DoD policy does not provide guidance on how to address this situation in the R-84 final disposition report.

Following their review of the command disposition source documents (such as the court-martial result of trial or non-judicial punishment form) and the form R-84, members observed that the final disposition submitted on the R-84 to the federal database was not always correct. Specifically, members noted that when the administrative action or non-judicial punishment recorded was not for the sexual assault offense or a lesser included offense, the disposition often did not convey that the command had elected not to pursue the sexual assault charge. Instead, the disposition found on the R-84 erroneously implied that disciplinary action was taken on the sexual assault offense.

In one case reviewed by the Committee, the only charge on the R-84 was for “Article 120, sexual assault” and the only disposition noted was “administrative punishment.” Examination of the command action form revealed that the administrative punishment consisted of verbal counseling on professional conduct and sensitivity to the mental effects of alcohol, not related to a violation of Article 120 or any other criminal offense. In another case, the charge on the R-84 was “sexual assault” and the disposition was “non-judicial punishment.” Examination of the command disposition form revealed that the non-judicial punishment was for the offense of adultery; sexual assault was not charged on the non-judicial punishment form.<sup>150</sup>

As discussed earlier, a Service member’s fingerprints must be submitted to the federal database upon a finding of probable cause, even if the commander ultimately takes no action on the case. The Committee found that out of the 96 cases it reviewed in which a judge advocate made a probable cause determination and the case did not result in prefferal of charges, non-judicial punishment, or administrative action for the penetrative sexual assault, the judge advocate determined that probable cause existed in 31 cases (32%). In the absence of a final disposition report accurately conveying the information that the command did not pursue criminal charges of penetrative sexual assault, in those cases the Service members’ information in the federal database would remain linked to the sexual assault offense.

### C. Discussion

The standards, timing, and authority for collecting and submitting fingerprints to the federal database should be clear, unambiguous, uniform for all Services, and aligned with federal and state practice to the greatest extent possible.

DoD policy does not provide the Services with direction on what standard to apply in order to collect fingerprints or on what point in the criminal investigation to collect them. The widespread current practice of

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referred to the commander for a disposition determination.

149 DoDI 5505.11, *supra* note 114, at encl. 4, ¶ 1c(4) (providing examples of exculpatory dispositions related to cases in which charges have been preferred, but not providing an example for the commander’s election not to file charges).

150 *Id.* at encl. 2 (listing offenses that require submission of criminal history data to the FBI; adultery is not a listed offense).

collecting fingerprints at the time of the subject interview, and before a probable cause consultation with a legal advisor, suggests that the standard, if any, may be less than that of probable cause.

DoD policy also does not clearly articulate who has the authority to determine whether probable cause exists to submit fingerprints to the federal database—the lawyer or the investigator. One can interpret the language in DoD policy to authorize military criminal investigators to make the probable cause determination irrespective of what the legal advisor thinks, or to require the legal advisor to make the determination. Review of the files reveals that different Services may interpret the policy differently. Some Services clearly give the legal advisor the authority to make the ultimate probable cause determination, while DoD seems to require only coordination with a legal advisor. In addition, in a significant percentage of criminal investigative files that the Committee reviewed, coordination with a legal advisor, if it occurred, is not documented.

Because DoD policy allows for submission of fingerprints upon a finding of probable cause any time after the subject interview, the Services submit fingerprints at various points between the subject interview and completion of the report of investigation.<sup>151</sup> In military practice, the subject interview normally occurs fairly early in the investigation, and many months before any charging decisions are made.<sup>152</sup> Allowing a subject's fingerprints to be submitted to the federal criminal history database so early in the investigation seems to deviate from the specific military and federal definition of criminal history data—information on “arrests; detentions; indictments; informations or other formal criminal charges.” Such early submission is allowed under DoD policy even though charges may never be preferred or referred in the case; in such cases, the information in the federal database will not be accurate regarding the subject's criminal history until the final disposition report is submitted, which often occurs many months after the subject interview.<sup>153</sup>

Finally, the final disposition report submitted to the federal database must accurately depict the commander's disposition decision for the sexual assault offense.<sup>154</sup> Since the final disposition report is used to provide information to the federal database, its long-term consequences for the subject and society are significant. DoD policy allows fingerprints to remain in the federal database after final disposition even though no criminal action is ultimately taken on the sexual assault complaint or a lesser included offense.<sup>155</sup> If Service members' criminal history records are inaccurate or misleading regarding a sexual assault offense, they can suffer lifelong harm. To ensure that the potential for inaccuracies is minimal, bearing in mind the definition of criminal history data,

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151 In the 31 cases reviewed by the CRWG in which probable cause was found but no action was taken by the command on the sexual assault offense, the length of time between the subject interview and the completion of the report of investigation ranged from two weeks to nine months.

152 In the 31 cases reviewed by the CRWG in which probable cause was found but no action was taken by the command on the sexual assault offense, the command decision to take no action occurred most frequently between 6 and 12 months following the subject interview. One command decision occurred between 0 and 3 months after the subject interview, 9 decisions occurred between 3 and 6 months, 12 decisions occurred between 6 and 12 months, and 6 decisions took over a year. These calculations do not include 3 cases lacking either a statement date or a command disposition decision.

153 DoDI 5505.11, *supra* note 114, at encl. 4, ¶ 1c(1) (noting that submission of the fingerprint card may be as early as the subject interview). See also Federal Bureau of Investigation, *Arrest Disposition Submission*, <https://www.fbi.gov/services/cjis/fingerprints-and-other-biometrics/arrest-disposition-submission> (noting that without the final disposition report to complete a subject's criminal history record, criminal investigations and background checks can be prevented or delayed).

154 Criminal Justice Information Systems, 28 C.F.R. § 20.34(4) (2017) (noting that if the final disposition report is not accurate, the criminal history will not be corrected until the disposition originating agency sends a correction to the NCIC; this is a process normally initiated by the subject). See also Federal Bureau of Investigation, *Arrest Disposition Submission*, <https://www.fbi.gov/services/cjis/fingerprints-and-other-biometrics/arrest-disposition-submission>.

155 See DoDI 5505.11, *supra* note 114. DoDI 5505.11 does not require removal from the federal criminal history database of fingerprints that are entered into the database upon a finding of probable cause even when no criminal action is ultimately taken on the offense identified in the database.

DoD policy should provide appropriate direction to the Services on how to address cases in which the command took no action on the sexual assault offense or took administrative, judicial, or non-judicial action only for an offense other than sexual assault.

#### **D. Findings, Assessment, and Recommendation**

On the basis of its review of investigative case files for cases of penetrative sexual assault closed in fiscal year 2017, testimony received during DAC-IPAD meetings and CRWG preparatory sessions, publicly available documents, and documentation provided by the Services, the DAC-IPAD makes the following findings, assessment, and recommendation related to the collection and submission of fingerprints and the submission of final disposition information to federal databases.

**Finding 22:** The standards, timing, and authority for collecting and submitting fingerprints to the federal database, making probable cause determinations, and submitting final disposition information to the federal database are unclear and not uniform across the Services.

**Finding 23:** MCIO coordination with judge advocates on a probable cause determination for the submission of fingerprints often is not documented in the investigative file.

**Finding 24:** Final dispositions being reported to the NCIC for sexual assault offenses are often inaccurate or misleading.

**Finding 25:** DoD policy does not provide direction to the Services for cases in which the command elects not to prefer charges for a sexual assault offense, but fingerprints have already been submitted to the federal criminal history database as part of a sexual assault investigation.

**Initial Assessment:** The Committee will continue to monitor the issues associated with collecting and submitting fingerprints and submitting final disposition information to the federal databases.

**DAC-IPAD Recommendation 7:** The Secretary of Defense (and the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) should provide uniform guidance to the Services regarding the submission of final disposition information to federal databases for sexual assault cases in which, after fingerprints have been submitted, the command took no action, or took action only for an offense other than sexual assault.



## CHAPTER 2.

# SEXUAL ASSAULT COURT-MARTIAL CASE ADJUDICATION TRENDS AND ANALYSIS

### I. INTRODUCTION

Before the DAC-IPAD was established, Congress tasked the JPP with reviewing and evaluating the judicial response to sexual assault cases in the military. To conduct its analysis, the JPP sought information from court records, case documents, and other publicly available resources for courts-martial resolved in fiscal years 2012 through 2015. Information from the cases was entered into a JPP-developed database, and the JPP coordinated with a criminologist to analyze the data and provide descriptive statistics concerning court-martial case characteristics, case dispositions, and case outcomes.

To continue the collection and analysis of data on sexual assault courts-martial, the DAC-IPAD formed the Data Working Group (DWG). The DWG is composed of three Committee members: Dr. Cassia Spohn, who serves as the working group's chair; retired Chief Master Sergeant of the Air Force Rodney McKinley; and Mr. James Markey. The DWG has continued to develop, refine, and expand the DAC-IPAD database and, in the past calendar year, added cases completed in fiscal year 2017.

### II. METHODOLOGY OF THE DATA WORKING GROUP

In January 2018, the DAC-IPAD staff, at the direction of Chair Bashford, requested that the Services provide documents for cases involving a preferred charge of sexual assault that were completed in fiscal year 2017.<sup>156</sup> However, the Department of Defense advised the DAC-IPAD that it would not provide the requested information until its Sexual Assault Prevention and Response Office released the *Annual Report on Sexual Assault in the Military* (SAPRO Report) to Congress in May 2018. On January 25, 2018, the DAC-IPAD staff, again at the direction of Chair Bashford, requested that the Services provide by March 26, 2018, a case list and associated documents, utilizing their individual case tracking databases without reference to the SAPRO Report. Ultimately, the Services did provide the requested information but only after DoD released the SAPRO Report to Congress in May. The staff screened the case records provided by the Services to identify duplicate cases, cases with incomplete documentation, cases of sexual assault that did not involve an adult victim, cases that did not involve a sex offense, and cases whose reported year of case completion was not correct. The resulting 658 cases from fiscal year 2017 were then added to the electronic database.<sup>157</sup>

The DAC-IPAD database includes cases encompassing fiscal years 2012 through 2017, all of which involve at least one charge of a penetrative sexual offense (i.e., rape, aggravated sexual assault, sexual assault, forcible sodomy, and attempts to commit these offenses) or a contact sexual offense (i.e., aggravated sexual contact, abusive sexual contact, wrongful sexual contact, and attempts to commit these offenses). DoD does not collect information on the legal outcome of cases in which the victim is the spouse or intimate partner; therefore the

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<sup>156</sup> A “completed” case means any case tried to verdict, dismissed without further action, or dismissed and then resolved by non-judicial or administrative proceedings.

<sup>157</sup> An additional 30 FY16 cases were added to the DAC-IPAD database, including one FY15 case reclassified as FY16.

statistical data for fiscal years 2012 through 2014, collected by the JPP, do not include the legal outcomes of those classes of cases and will not be included in the historical discussion to follow.

### **III. MILITARY JUSTICE INFORMATION FOR SEXUAL ASSAULT CASES COLLECTED BY THE DAC-IPAD**

The DAC-IPAD relies on the Services to report cases meeting the criteria specified. The DAC-IPAD therefore does not assert that it has the complete universe of cases throughout the Armed Forces in which a sexual assault charge was filed. The data were also limited to cases in which a complete set of disposition records could be identified and retrieved for analysis. In the following tables and charts, percentages may not total 100, owing to rounding errors or missing data. Also, cadets/midshipmen and warrant officers are included with “officers.” Data tables for fiscal years 2015 through 2017, provided in Appendix I, inform the presentation of data that follows.

#### **A. Court-Martial Case Characteristics**

The DAC-IPAD received 658 court-martial records from the Services that involved the preferral of an adult-victim sexual assault offense and were completed in fiscal year 2017. Among the Services, the Army generated the most cases. Courts-martial records indicated that the accused was usually male and the victims were most often female. In addition, the vast majority of courts-martial involved one military victim; however, there were several that involved multiple victims. In 74% of cases, the most serious charge that was preferred was a penetrative offense.

The DAC-IPAD notes that a number of characteristics are similar across the cases from fiscal year 2015 through fiscal year 2017:

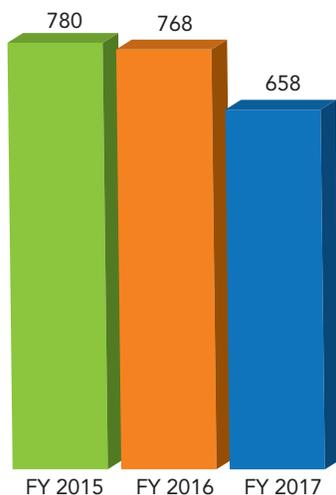
- The characteristics of the accused and the victim
- The proportion of cases involving a penetrative offense
- The proportion of cases tried by court-martial
- The proportion of penetrative offenses referred to general courts-martial

#### ***1. Overview of Total Cases Received***

The Services provided 918 cases in response to the request for information. After the DAC-IPAD staff reviewed the cases to verify their alignment with established criteria for inclusion, 658 cases (72% of submitted cases) for FY17 were added to the database. Reasons for a case being classified as “non-responsive” and therefore not added to the database include being a non-qualifying non-sex offense, being a child-victim sex offense, being an instance of duplicate reporting, and falling into another fiscal year.

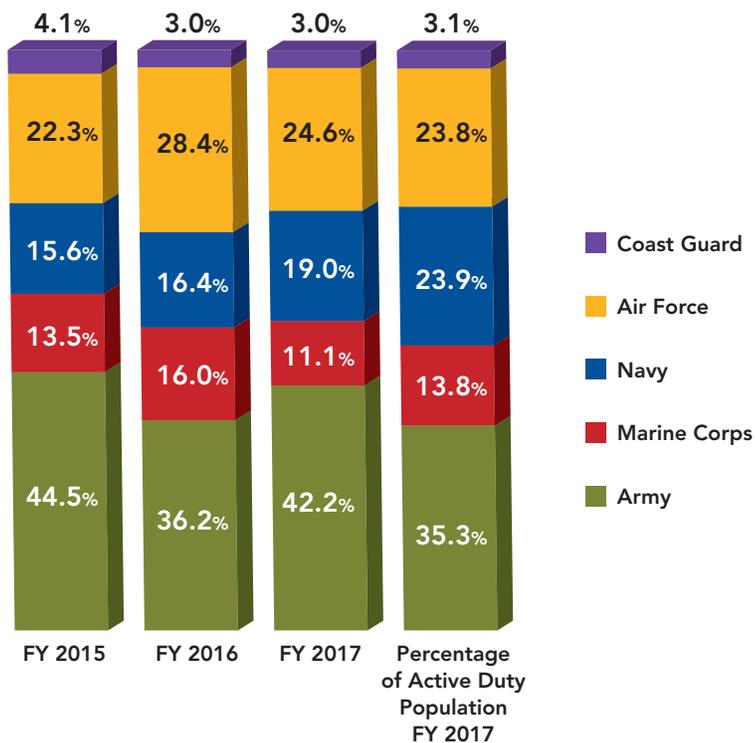
In FY17 the DAC-IPAD recorded an almost 15% decline in cases from FY16, representing a substantial change when compared to the 2% decline between FY15 and FY16. The reason for the decline is unclear from the data; the question will be examined again when cases from future fiscal years are available.

**CASES DOCUMENTED BY THE DAC-IPAD**



Of the 658 cases received by the DAC-IPAD for FY17, the Army generated the most cases (42%), followed by the Air Force (25%), Navy (19%), Marine Corps (11%), and Coast Guard (3%).

**MILITARY SERVICE OF THE ACCUSED**



To provide additional context for the number of cases included in the DAC-IPAD database from each military Service, the tables below show the active duty population in each Military Service in fiscal years 2015 through 2017, and the proportion that each Military Service constitutes of the overall active duty population.<sup>158</sup>

**ACTIVE DUTY POPULATION BY MILITARY SERVICE WITH  
NUMBER OF SEXUAL ASSAULT CASES IN DAC-IPAD DATABASE (FY 2015)**

	Size of Active Duty Population	Percentage of Total Active Duty Population	Number of Cases in DAC-IPAD Database	Percentage of Cases in DAC-IPAD Database
Army	491,365	36.3%	347	44.5%
Marine Corps	183,417	13.5%	105	13.5%
Navy	327,801	24.2%	122	15.6%
Air Force	311,357	23.0%	174	22.3%
Coast Guard	39,970	3.0%	32	4.1%
<b>Total</b>	<b>1,353,910</b>	<b>100.0%</b>	<b>780</b>	<b>100.0%</b>

**ACTIVE DUTY POPULATION BY MILITARY SERVICE WITH  
NUMBER OF SEXUAL ASSAULT CASES IN DAC-IPAD DATABASE (FY 2016)**

	Size of Active Duty Population	Percentage of Total Active Duty Population	Number of Cases in DAC-IPAD Database	Percentage of Cases in DAC-IPAD Database
Army	475,400	35.4%	278	36.2%
Marine Corps	183,501	13.7%	123	16.0%
Navy	324,524	24.2%	126	16.4%
Air Force	317,883	23.7%	218	28.4%
Coast Guard	40,473	3.0%	23	3.0%
<b>Total</b>	<b>1,341,781</b>	<b>100.0%</b>	<b>768</b>	<b>100.0%</b>

158 Figures obtained from the 2015 through 2017 DoD demographic reports are available at <http://www.militaryonesource.mil/mos/reports-and-surveys>. The figures do not include the number of Guard and Reserve Component members who were on active duty and subject to the UCMJ.

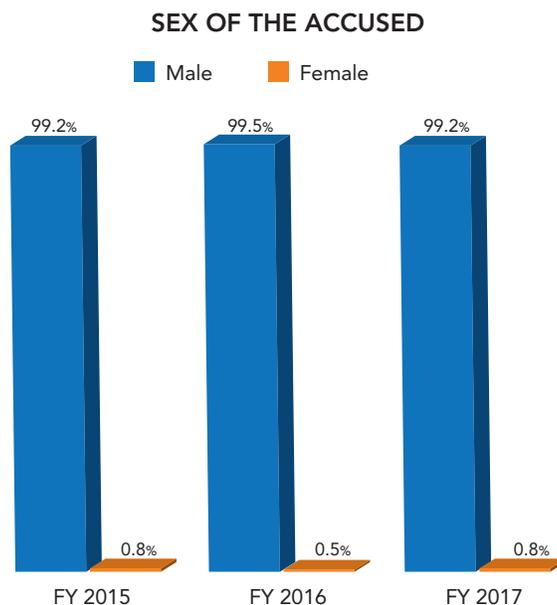
**ACTIVE DUTY POPULATION BY MILITARY SERVICE WITH  
NUMBER OF SEXUAL ASSAULT CASES IN DAC-IPAD DATABASE (FY 2017)**

	Size of Active Duty Population	Percentage of Total Active Duty Population	Number of Cases in DAC-IPAD Database	Percentage of Cases in DAC-IPAD Database
Army	472,047	35.3%	278	42.2%
Marine Corps	184,401	13.8%	73	11.1%
Navy	319,492	23.9%	125	19.0%
Air Force	318,580	23.8%	162	24.6%
Coast Guard	41,581	3.1%	20	3.0%
<b>Total</b>	<b>1,336,101</b>	<b>100.0%</b>	<b>658</b>	<b>100.0%</b>

As noted earlier, the total number of cases reported declined in 2017; however, the decline was not consistent across the Services. While the Air Force’s respective share of total cases decreased slightly from its fiscal year 2016 level (28%) to 25%, the latter roughly corresponds to its percentage of the active duty population in fiscal year 2017 (24%). Between fiscal years 2016 and 2017, the Army’s number of cases (278) and its percentage of the active duty population (35%) were unchanged, but as a portion of cases in the DAC-IPAD database its percentage increased from 36% to 42%. The Marine Corps showed the most significant change in its number of cases, which dropped from 123 in FY16 to 73 in FY17, though its percentage of the active duty population remained unchanged at 14%.

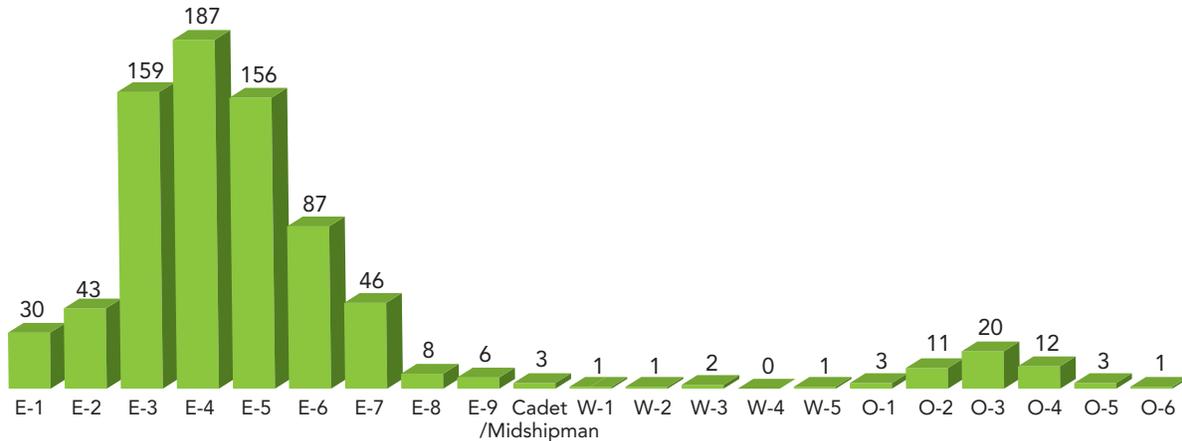
### ***2. Accused Characteristics***

For fiscal years 2015 through 2017, the accused in nearly all cases is male (99%).

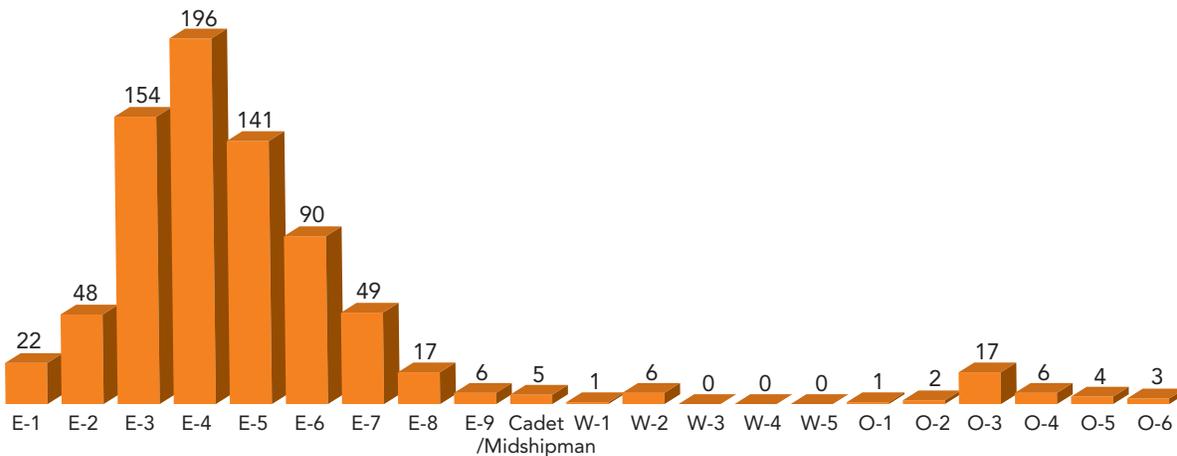


In addition, the accused is most often enlisted. In FY17, enlisted personnel were roughly 80% of the total active duty population but were a higher percentage of the cases (92%) in the database. Whereas officers were nearly 20% of the active duty population, they were a smaller percentage of the cases (8%). In FY17, personnel in the pay grades E3 to E5 were approximately 51% of the active duty population, but accounted for most (65%) of the enlisted accused.<sup>159</sup>

**PAY GRADE OF THE ACCUSED (FY 2015)**

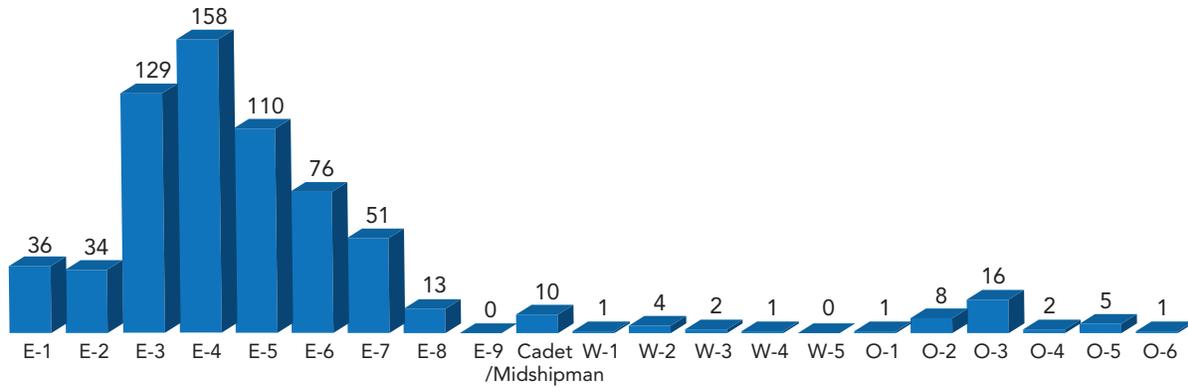


**PAY GRADE OF THE ACCUSED (FY 2016)**



159 *Id.*

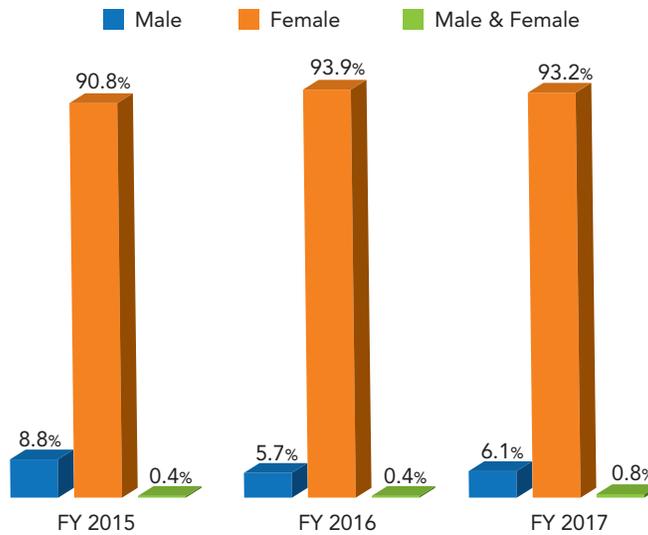
PAY GRADE OF THE ACCUSED (FY 2017)



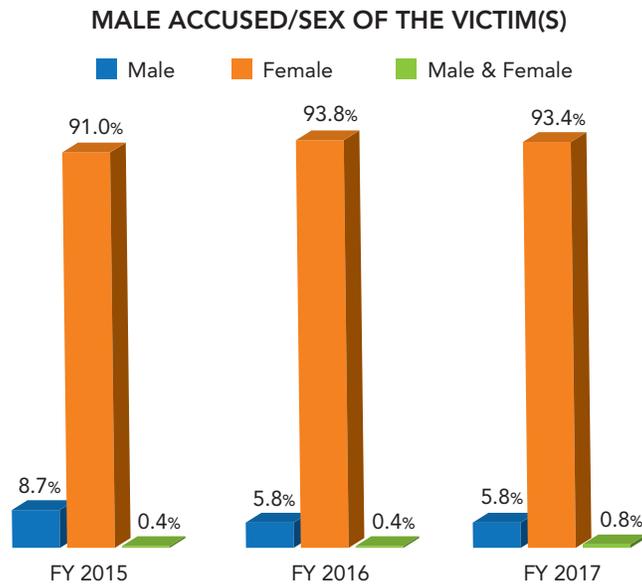
### 3. Victim Characteristics

In FY17 93% of the victims were female and 6% were male; nearly 1% of the cases involved both male and female victims.

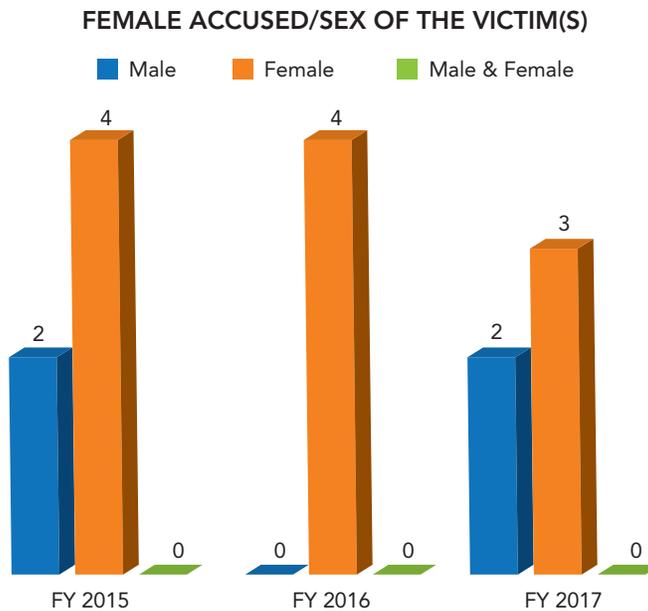
SEX OF THE VICTIM(S)



In FY17 when the accused was male, the victim was exclusively female in 93% of the cases, exclusively male in 6% of the cases, and in nearly 1% of the cases victims were of both sexes.

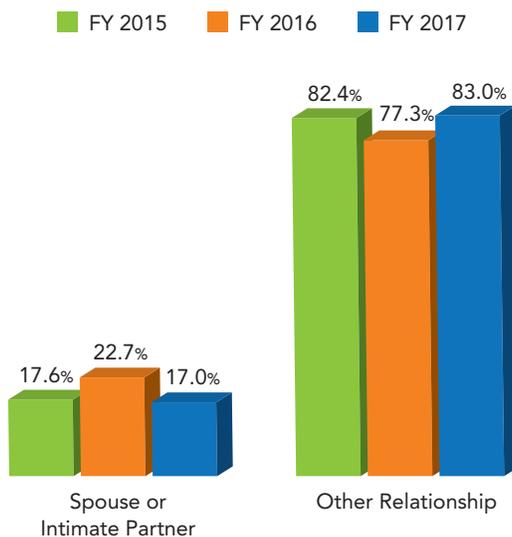


In FY17 when the accused was female, the victim was exclusively female in 60% of the cases and exclusively male in 40% of the cases. The DAC-IPAD has not received a case from the Services in which a female accused sexually assaulted both male and female victims during fiscal years 2015 through 2017.



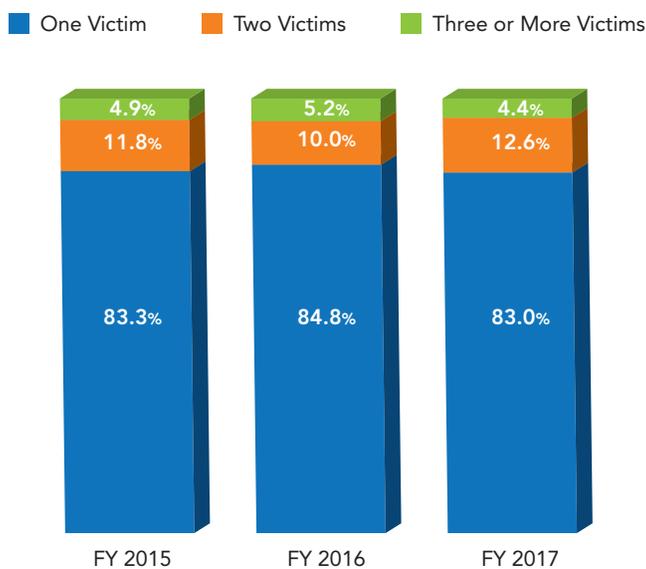
In FY17 the accused's spouse or intimate partner was the victim in 17% of the cases, a decrease from FY16 (23%) and FY15 (18%).

**VICTIM RELATIONSHIP TO ACCUSED**



Most cases in FY17, as well as historically, involved one (83%) or two (13%) victims.

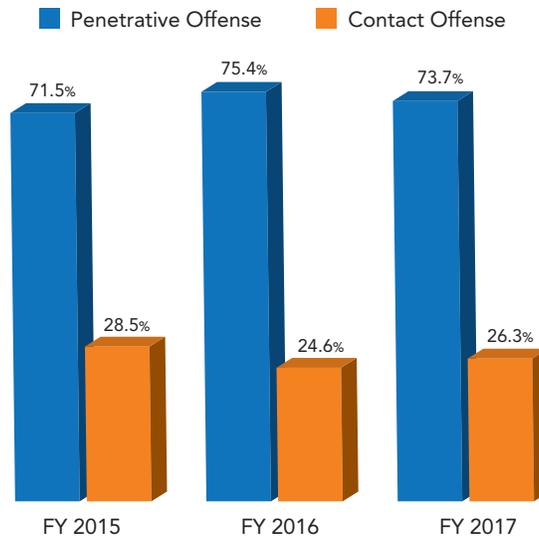
**NUMBER OF VICTIMS PER CASE**



#### 4. Characteristics of the Nature of the Charges

A penetrative offense, as opposed to a contact offense, was the type of offense preferred most often, appearing in 485 (74%) of 658 cases in FY17. This preference rate is similar to those observed in fiscal years 2015 (72%) and 2106 (75%).

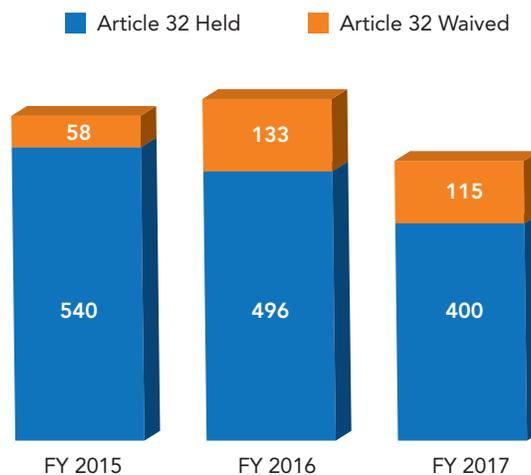
TYPE OF MOST SERIOUS SEX OFFENSE CHARGED



#### B. Article 32 Hearings

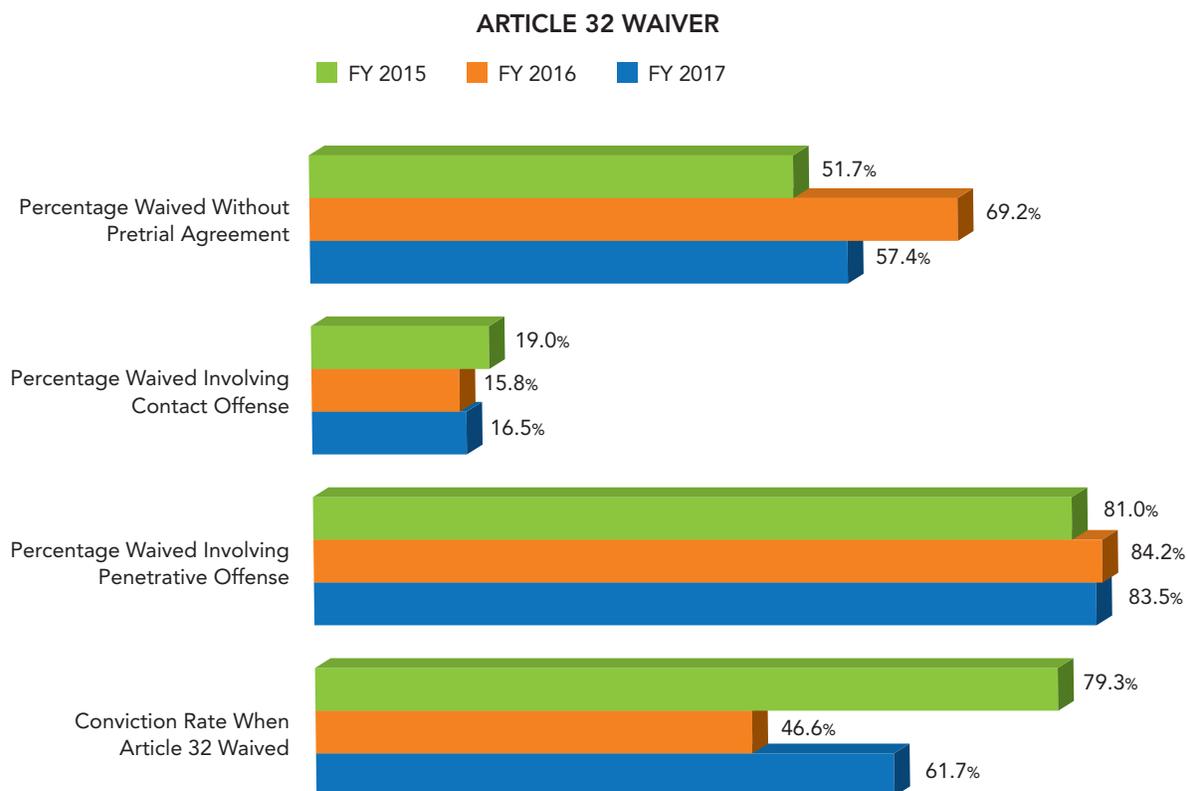
In 2014 the Article 32 hearing, required prior to charges being referred to a general court-martial, was changed from a pretrial investigation into a less robust preliminary hearing. Under the old process, victims were frequently required to appear, testify, and undergo cross-examination from defense counsel; this requirement has been removed from the process.

ARTICLE 32 HEARINGS



In FY17, Article 32 hearings were held in 400 cases and waived in an additional 115 cases. The number of hearings waived more than doubled from FY15 to FY16; but while there were fewer hearings waived in FY17, the proportion of hearings waived (18%) was nearly unchanged from FY16 (17%).

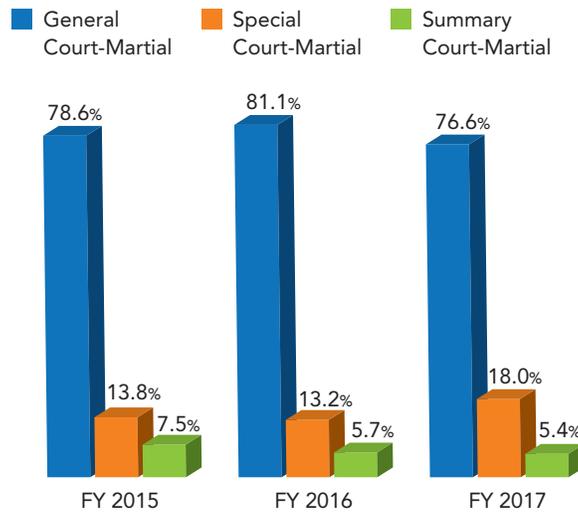
In FY17, Article 32 hearings were waived in 66 cases without a pretrial agreement, a decrease from 92 cases in FY16. Of the 115 cases in FY17 for which the Article 32 hearing was waived, 96 (84%) involved a penetrative offense and 19 (17%) involved a contact offense. In both instances, the rates in fiscal years 2016 and 2017 do not vary more than 1%. However, the conviction rate when the Article 32 hearing was waived increased in FY17 (62%) from FY16 (47%).



### C. Disposition Decisions

In FY17, convening authorities referred a total of 428 cases to trial by general, special, and summary court-martial; thus, 65% of all preferred cases were referred to trial. Conversely, convening authorities dismissed or resolved through alternate administrative means 230, or 35%, of preferred cases. Overall, 77% of referred cases in FY17 were referred to trial by general court-martial, representing a decline from FY16 (81%).

**CASE DISPOSITION: COURT-MARTIAL TYPE**



The following tables illustrate case dispositions by Military Service of the accused for fiscal years 2015 through 2017.

**CASE DISPOSITION BY MILITARY SERVICE OF THE ACCUSED (FY 2015)**

	General Court-Martial				Special Court-Martial				Summary Court-Martial			
	Penetrative		Contact		Penetrative		Contact		Penetrative		Contact	
<b>Army</b>	192	77.1%	29	11.6%	3	1.2%	14	5.6%	1	0.4%	10	4.0%
<b>Marine Corps</b>	41	54.7%	8	10.7%	4	5.3%	9	12.0%	6	8.0%	7	9.3%
<b>Navy</b>	49	52.1%	10	10.6%	2	2.1%	25	26.6%	0	0.0%	8	8.5%
<b>Air Force</b>	83	73.5%	15	13.3%	1	0.9%	12	10.6%	0	0.0%	2	1.8%
<b>Coast Guard</b>	9	34.6%	2	7.7%	3	11.5%	4	15.4%	3	11.5%	5	19.2%

**CASE DISPOSITION BY MILITARY SERVICE OF THE ACCUSED (FY 2016)**

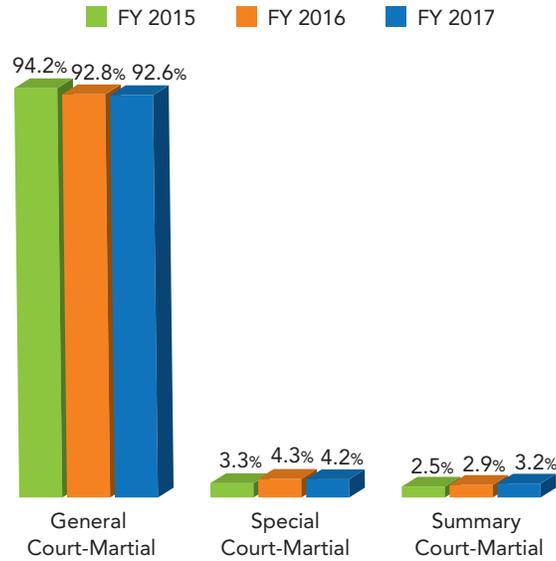
	General Court-Martial				Special Court-Martial				Summary Court-Martial			
	Penetrative		Contact		Penetrative		Contact		Penetrative		Contact	
Army	163	80.7%	24	11.9%	1	0.5%	10	5.0%	2	1.0%	2	1.0%
Marine Corps	40	48.2%	10	12.0%	7	8.4%	16	19.3%	7	8.4%	3	3.6%
Navy	45	54.2%	7	8.4%	6	7.2%	16	19.3%	2	2.4%	7	8.4%
Air Force	89	84.0%	10	9.4%	1	0.9%	5	4.7%	0	0.0%	1	0.9%
Coast Guard	11	61.1%	0	0.0%	1	5.6%	2	11.1%	0	0.0%	4	22.2%

**CASE DISPOSITION BY MILITARY SERVICE OF THE ACCUSED (FY 2017)**

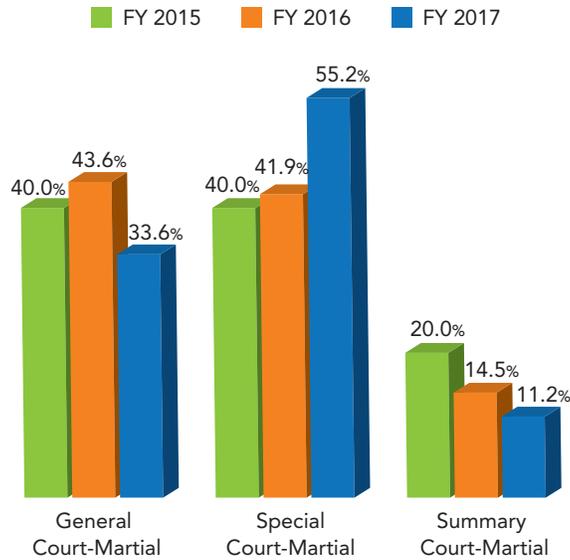
	General Court-Martial				Special Court-Martial				Summary Court-Martial			
	Penetrative		Contact		Penetrative		Contact		Penetrative		Contact	
Army	142	76.3%	24	12.9%	1	0.5%	10	5.4%	4	2.2%	5	2.7%
Marine Corps	24	44.4%	3	5.6%	8	14.8%	13	24.1%	4	7.4%	2	3.7%
Navy	49	55.7%	5	5.7%	2	2.3%	28	31.8%	2	2.3%	2	2.3%
Air Force	68	81.0%	6	7.1%	0	0.0%	10	11.9%	0	0.0%	0	0.0%
Coast Guard	6	37.5%	1	6.3%	2	12.5%	3	18.8%	0	0.0%	4	25.0%

The severity of offense charged influences the type of court-martial to which a charge is referred. Among cases completed in FY17, 93% of penetrative offenses were referred to trial by general court-martial, while contact offenses were referred less often to general (34%) and summary (11%) than to special court-martial (55%). In contrast, in FY16 contact offenses were referred at about equal frequency to general (44%) and special court-martial (42%) and less often to summary court-martial (15%).

**CASE DISPOSITION: PENETRATIVE OFFENSE PREFERRED**



**CASE DISPOSITION: CONTACT OFFENSE PREFERRED**

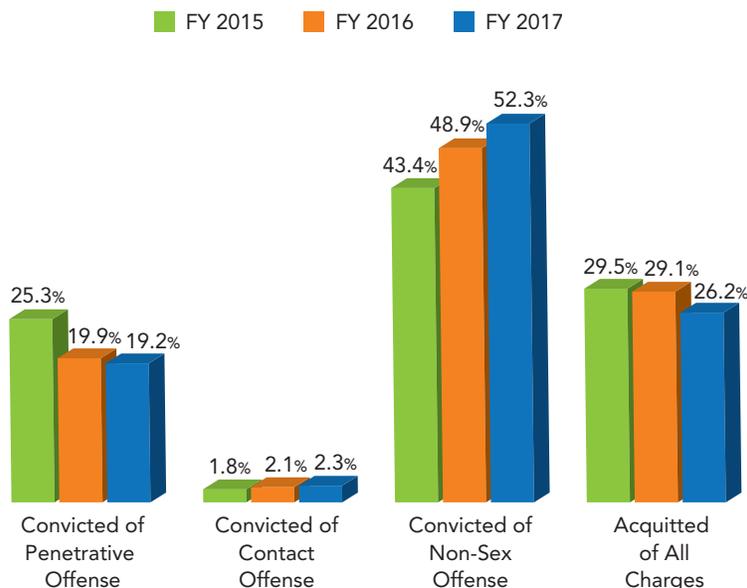


**D. Adjudication Outcomes**

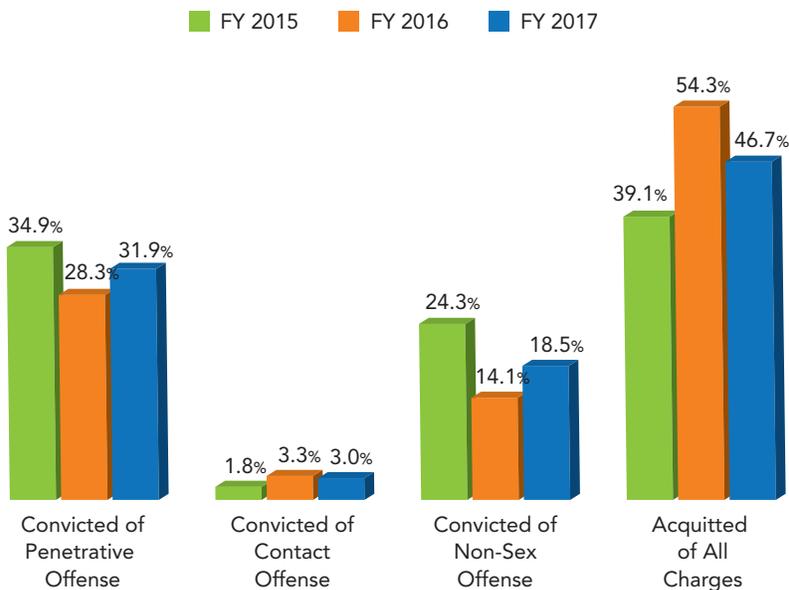
Conviction, acquittal, and dismissal rates summarize how sexual assault prosecutions are ultimately resolved in the military justice system. The following charts illustrate case outcomes for cases according to how the case was

adjudicated (by a military judge or by a panel of military members) and according to the type of offense charged (penetrative or contact).

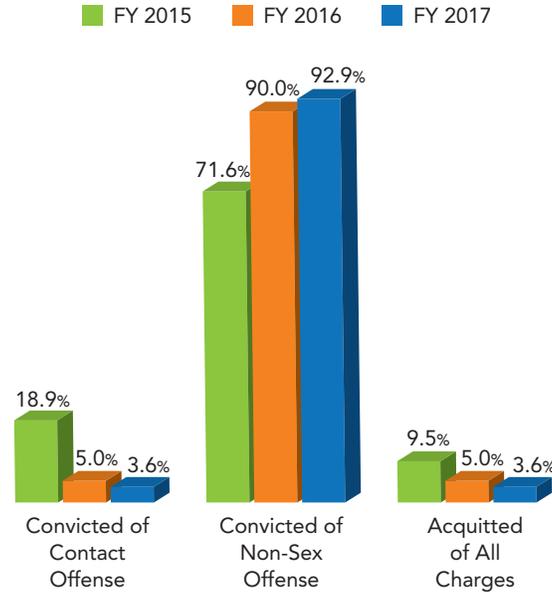
**OUTCOMES FOR CONTESTED PENETRATIVE OFFENSE TRIALS:  
ADJUDICATED BY MILITARY JUDGE**



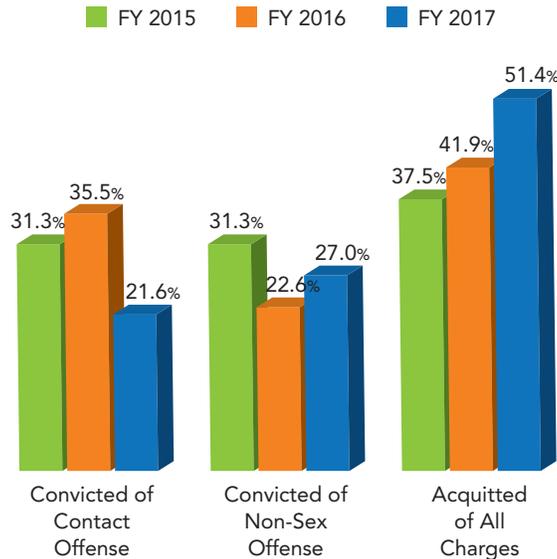
**OUTCOMES FOR CONTESTED PENETRATIVE OFFENSE TRIALS:  
ADJUDICATED BY PANEL OF MILITARY MEMBERS**



**OUTCOMES FOR CONTESTED CONTACT OFFENSE TRIALS:  
ADJUDICATED BY MILITARY JUDGE**

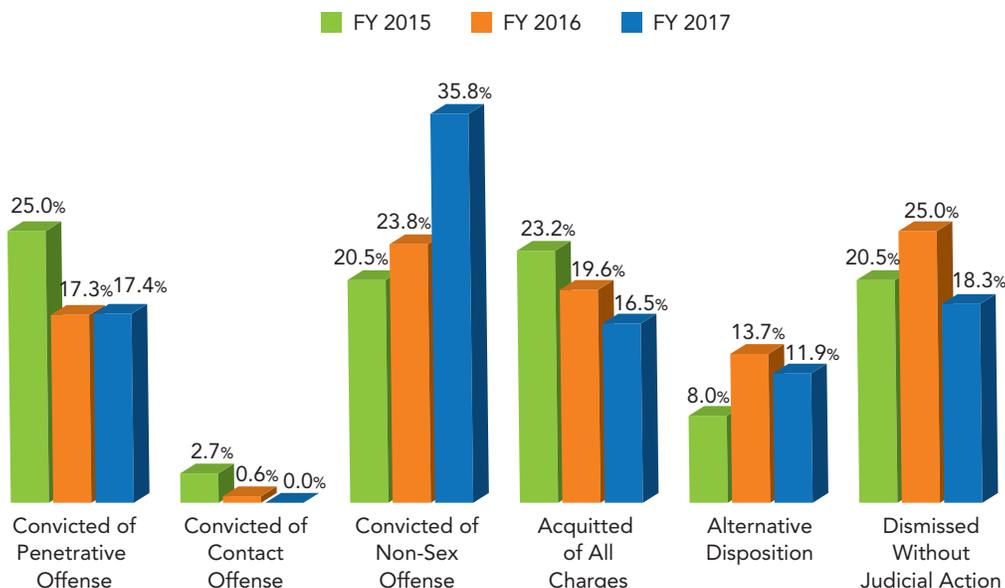


**OUTCOMES FOR CONTESTED CONTACT OFFENSE TRIALS:  
ADJUDICATED BY PANEL OF MILITARY MEMBERS**

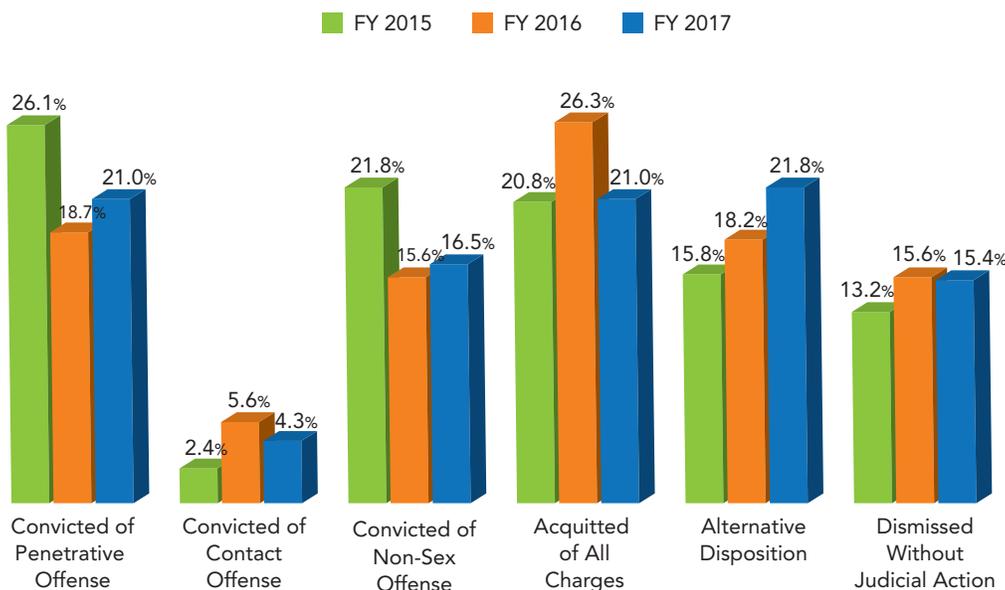


In FY17, among cases charged with a penetrative offense, non-intimate partner victim cases were more likely to end in acquittal (21%) than intimate partner victim cases (17%), and intimate partner victim cases were more likely to end in a conviction for a non-sexual assault offense (36% compared to 17%).

**ACCUSED CHARGED WITH PENETRATIVE OFFENSE  
VICTIM: SPOUSE OR INTIMATE PARTNER**



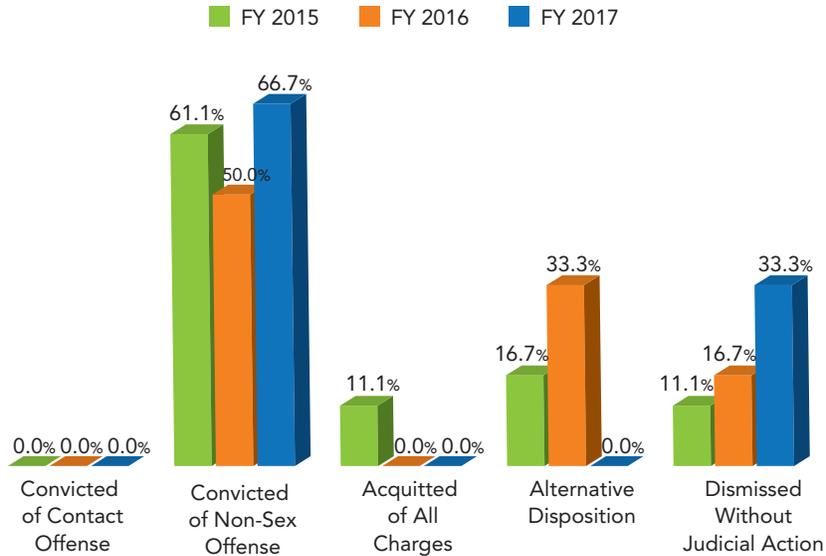
**ACCUSED CHARGED WITH PENETRATIVE OFFENSE  
VICTIM: OTHER RELATIONSHIP**



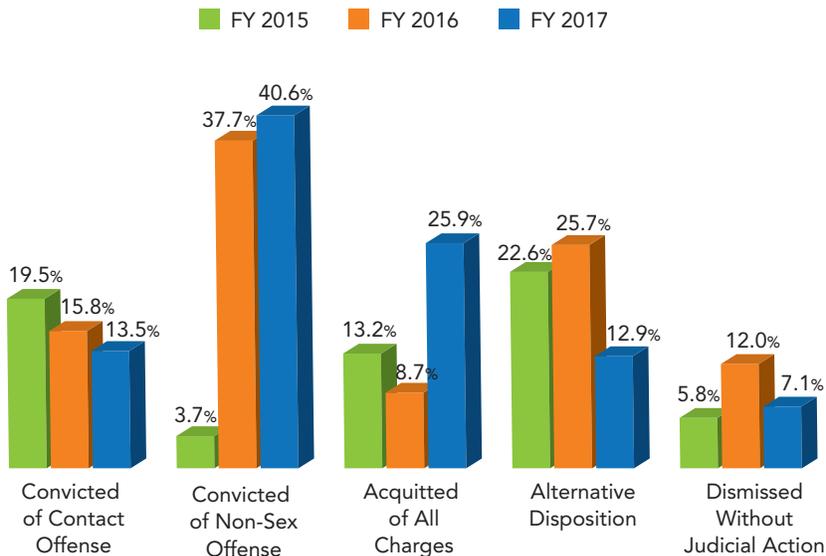
The small numbers of intimate partner victim cases with a contact offense charge make it difficult to have draw any statistical conclusions. In FY17 there were 3 cases involving a charged contact offense and an intimate

partner, representing a decline from 6 cases in FY16 and 18 cases in FY15. When cases are combined across the charged offense (penetrative and contact), intimate partner cases were more likely to end in a conviction (54%) than non-intimate partner cases (46%), but dismissal rates were also higher for intimate partner victim cases (19%) than for non-intimate partner cases (13%).

**ACCUSED CHARGED WITH CONTACT OFFENSE  
VICTIM: SPOUSE OR INTIMATE PARTNER**



**ACCUSED CHARGED WITH CONTACT OFFENSE  
VICTIM: OTHER RELATIONSHIP**



## IV. MULTIVARIATE ANALYSIS

### A. Summary of the Multivariate Analyses – Fiscal Year 2015

In most analyses, the strongest predictor of outcome was whether the accused was charged with or convicted of at least one count of a penetrative offense. Those who were charged with penetrative offenses were less likely than those charged with contact offenses to be convicted of at least one charge, were more likely to be acquitted of all charges, and were more likely to have the case dismissed without further judicial action. On the other hand, if the accused was convicted of a penetrative offense, he or she was more likely to be sentenced to confinement, was more likely to receive a punitive separation, and faced a substantially longer sentence than those convicted of non-sex offenses. By contrast, neither the rank of the accused nor the sex of the victim affected any of the outcomes examined.

#### *Service Branch*

- The chances of a conviction for a penetrative offense were more likely if the accused was in the Army than if the accused was in the Air Force or the Marine Corps.
- The chances of conviction for at least one charge were more likely if the accused was in the Coast Guard than if the accused was in any of the other Services.
- Cases were less likely to result in an acquittal at trial if the accused was serving in the Army or Coast Guard than if the accused was serving in the Air Force or Navy.
- Cases were less likely to be dismissed without further judicial action if the accused was in the Air Force rather than the Marine Corps or the Navy.
- Members of the Army were more likely than those in the Coast Guard to receive a punitive separation.

#### *Number of Charges*

- The chances of a conviction increased as the number of charges increased.
- The chances of acquittal and dismissal declined as the number of charges increased.
- The severity of sentences increased as the number of charges increased.

#### *Number of Victims*

- The chances of conviction increased as the number of victims increased.
- The chances of a confinement sentence increased as the number of victims increased.

#### *Status of Victims*

- The chances of conviction were lower for cases in which the victim was a member of the military rather than a civilian.
- The chances of acquittal were higher for cases in which the victim was a member of the military rather than a civilian.

- The chances that the accused would receive either a sentence of confinement or a punitive separation were lower if the victim was a member of the military rather than a civilian.

#### *Victim–Accused Relationship*

- The chances of conviction were lower if the victim was a spouse or intimate partner of the accused.
- The chances of case dismissal were greater for intimate partner cases than for cases with other relationships between the victim and the accused.
- The confinement sentence was almost three years longer if the victim was the spouse or intimate partner.

### **B. Summary of the Multivariate Analyses – Fiscal Year 2016**

Consistent patterns emerge from the multivariate analyses. The following variables have relatively consistent effects on the conviction and sentencing outcomes: service branch of the accused, number of charges, and charged/conviction offense.

#### *Service Branch*

- The chances of a conviction were lower in Air Force cases than in the other Service branches.
- Cases were more likely to end in acquittal in the Air Force than in the Marine Corps.
- Cases were more likely to be dismissed in the Marine Corps and Navy than in the Army.
- Members of the Marine Corps who were convicted faced more severe sanctions than convicted members of the Air Force and Navy.

#### *Number of Charges*

- The chances of a conviction increased as the number of charges increased.
- The chances of acquittal and dismissal declined as the number of charges increased.
- The chances of a punitive separation sanction became greater as the number of charges increased.
- The severity of sentences increased as the number of charges increased.

#### *Charged Offense / Conviction Offense*

- Those charged with a penetrative offense were less likely to be convicted of any offense.
- Those charged with a penetrative offense were more likely to be acquitted.
- Those convicted of a penetrative offense faced more severe sanctions (confinement, punitive separation, and sentence severity) when compared to those convicted of a contact offense or a non–sexual assault offense.
- Those convicted of a contact offense faced more severe sanctions (confinement, punitive separation, and sentence severity) when compared to those convicted of a non–sexual assault offense.

### *Victim–Accused Relationship*

- The chances of case dismissal were greater for intimate partner cases than for cases with other relationships between the victim and the accused.

### **C. Summary of the Multivariate Analyses – Fiscal Year 2017**

Consistent patterns emerge from the multivariate analyses. The following variables have relatively consistent effects on the conviction and sentencing outcomes: service branch of the accused, number of charges, and charged/conviction offense.

#### *Service Branch*

- The chances of a conviction for a penetrative offense were greater in the Army than in the Air Force.
- The chances of any conviction were lower in the Air Force in comparison to all other service branches.
- The chances of an acquittal were greater in the Air Force than in the Army; the chances of a dismissal were greater in the Air Force than in the Army and Navy.
- Convicted members of the Marine Corps face a greater chance of punitive separation than their counterparts in the Coast Guard.
- Convicted members of the Air Force and Marine Corps faced more severe sentences, on average, than convicted members of the Army and Coast Guard.
- Convicted members of the Marine Corps faced more severe sentences, on average, than convicted members of the Navy.

#### *Number of Charges*

- The chances of a conviction for any offense, of punitive separation, and of a more severe sentence increased when the number of charges was higher.
- The chances of acquittal and the chances of dismissal both decreased when the number of charges was higher.

#### *Charged Offense / Conviction Offense*

- The chances of acquittal and the chances of dismissal both declined as the number of charges increased.
- The chance of a confinement sentence was greatest when the conviction was for a penetrative offense. Convictions for a contact offense were more likely to result in a confinement sentence than convictions for non–sexual assault offenses.
- The likelihood of a punitive separation sentence was greater when the conviction was for a sexual assault offense rather than a non–sexual assault offense.
- Sentence severity was greatest, on average, for penetrative offense convictions. Sentence severity, on average, was greater for contact-offense convictions than for non–sexual assault convictions.

### *Victim Variables*

- A greater number of victims in a case was associated with an increased chance of a conviction for a penetrative offense.
- Military-only victim cases were linked to reduced chances that the case would result in a confinement sentence, compared to civilian-only victim cases and those with military and civilian victims.
- Female-only victim cases were linked to increased chances that the case would result in a punitive separation sentence, compared to male-only victim cases and those with female and male victims.

## **V. DATA PROJECT WAY FORWARD**

The DWG will continue the data collection and analysis project in the coming months. Future analyses will include descriptive statistics concerning court-martial case characteristics, case dispositions, and case outcomes. In addition, the DWG anticipates further examination of data points concerning adjudged versus approved sentences, the relationship between the victim and the accused and the resulting outcome of the case, and the timeliness of the court-martial processes among the Services.

## CHAPTER 3. CHANGES TO MILITARY SEXUAL ASSAULT DATA COLLECTION AND CASE MANAGEMENT IN THE NEW ARTICLE 140a, UNIFORM CODE OF MILITARY JUSTICE

### I. INTRODUCTION

The Military Justice Act of 2016, enacted as part of the National Defense Authorization Act for Fiscal Year 2017 (FY17 NDAA),<sup>160</sup> significantly updated and revised various substantive and procedural provisions of the Uniform Code of Military Justice (UCMJ). These changes were implemented on the recommendation of the Military Justice Review Group, a Department of Defense–established committee of military justice experts formed by the Chairman of the Joint Chiefs of Staff in 2015 to undertake the first comprehensive and holistic review of the UCMJ and Manual for Courts-Martial in 30 years.<sup>161</sup> Most of the act’s new provisions took effect on January 1, 2019.<sup>162</sup>

Section 5504 of the FY17 NDAA establishes a new Article 140a, UCMJ, *Case management; data collection and accessibility*, which calls for the Secretary of Defense to prescribe uniform standards and criteria to be used at all stages of the military justice process, incorporating, insofar as practicable, the best practices of federal and state courts. The standards and criteria are required to address four key areas of military justice practice:

- (1) Collection and analysis of data concerning substantive offenses and procedural matters in a manner that facilitates case management and decision making within the military justice system, and that enhances the quality of periodic reviews under section 946 of this title (article 146).<sup>163</sup>
- (2) Case processing and management.
- (3) Timely, efficient, and accurate production and distribution of records of trial within the military justice system.
- (4) Facilitation of access to docket information, filings, and records, taking into consideration restrictions appropriate to judicial proceedings and military records.<sup>164</sup>

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160 National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328 [hereinafter FY17 NDAA], 130 Stat. 2000 (2016), as further amended by section 1081(c) of the National Defense Authorization Act for Fiscal Year 2018, Pub. Law. No. 115-91, 131 Stat. 1283 (2017).

161 See Secretary of Defense Memorandum, October 18, 2013, available at [http://ogc.osd.mil/images/mjrg\\_secdef\\_memo.pdf](http://ogc.osd.mil/images/mjrg_secdef_memo.pdf); see also REPORT OF THE MILITARY JUSTICE REVIEW GROUP, PART I 5 (Dec. 22, 2015) [hereinafter MJRG REPORT], available at [http://ogc.osd.mil/images/report\\_part1.pdf](http://ogc.osd.mil/images/report_part1.pdf).

162 FY17 NDAA, *supra* note 160.

163 10 U.S.C. § 946 (2019). Article 146 requires analysis of sentencing data from general and special courts-martial and periodic reviews of the UCMJ.

164 FY17 NDAA, *supra* note 160, § 5504.

In recommending that Congress enact Article 140a, the Military Justice Review Group addressed a fundamental problem: the Service-specific case management, data access, and data collection practices currently in use make it difficult to collect and analyze military justice data within and across the Services.<sup>165</sup> Moreover, the lack of offense-specific sentencing data hinders a meaningful comparison of sentencing outcomes in military and civilian courts.<sup>166</sup>

The goals of Article 140a—to achieve greater efficiency and transparency in the processing of cases in the military justice system and to facilitate periodic reviews of the UCMJ and Manual for Courts-Martial—touch on an issue of great importance to this Committee: the lack of comprehensive and meaningful information about the military justice response to sexual assault in the Armed Forces. This concern was previously highlighted by the Judicial Proceedings Panel in three separate reports issued in 2016 and 2017 to the Secretary of Defense.<sup>167</sup> The JPP found that the Department of Defense does not collect sufficient data to fully assess how adult sexual assault cases are resolved through the military justice system, and recommended that DoD adopt one uniform system for the collection and analysis of sexual assault case documents and data. The DAC-IPAD fully supports the JPP's assessment and believes that gaining a better understanding of these cases, which are frequently complex and have an enormous impact on the lives of both the victim and the accused, can help shed light on the effects of numerous recent sexual assault-related reforms in the military and highlight areas for further study and improvement.

The Committee further recognizes that data collected under the auspices of Article 140a have great potential value both for military practitioners seeking ways to improve their practice and for policymakers who will rely, pursuant to Article 146, UCMJ,<sup>168</sup> on case data analysis as they evaluate military law and procedure in the future. The data that undergird these policy decisions, particularly decisions that lead to Service members being deprived of their liberty following a court-martial, must be accurate and comprehensive. Therefore, the Committee's review of this statute and recommendations for its implementation aim to guide the establishment of a common data collection system across the Department of Defense in order to produce accurate, meaningful information about adult-victim sexual assault and other offenses.

The FY17 NDAA required that the Secretary of Defense issue the uniform standards and criteria for military justice data collection and case management by January 1, 2019. The Committee therefore provided its analysis and recommendations for implementing Article 140a in a letter submitted to the Secretary of Defense on September 13, 2018, so that DoD could consider the Committee's input as it developed this policy. The Committee's letter to the Secretary of Defense, encompassing its recommendations and supporting enclosures, is provided at Appendix J. This chapter provides an expanded discussion of the information gathered by the Committee in its study of military justice data collection processes currently in place in the military and civilian justice systems, the rationale behind its recommendations, and a restatement of the recommendations made to

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165 MJRG REPORT, *supra* note 161, at 1012.

166 *Id.* (quoting the RSP REPORT, *supra* note 45, at 136–37).

167 JPP REPORT ON STATISTICAL DATA, *supra* note 47; JUDICIAL PROCEEDINGS PANEL REPORT ON STATISTICAL DATA REGARDING MILITARY ADJUDICATION OF SEXUAL ASSAULT OFFENSES FOR FISCAL YEAR 2015 (Sept. 2017) [hereinafter JPP REPORT ON FY15 STATISTICAL DATA], *available at* [http://jpp.whs.mil/public/docs/08-Panel\\_Reports/09\\_JPP\\_CourtMartial\\_Data\\_Report\\_Final\\_20170915.pdf](http://jpp.whs.mil/public/docs/08-Panel_Reports/09_JPP_CourtMartial_Data_Report_Final_20170915.pdf); and JUDICIAL PROCEEDINGS PANEL REPORT ON PANEL CONCERNS REGARDING THE FAIR ADMINISTRATION OF MILITARY JUSTICE IN SEXUAL ASSAULT CASES (Sept. 2017) [hereinafter JPP REPORT ON FAIR ADMINISTRATION OF MILITARY JUSTICE], *available at* [http://jpp.whs.mil/public/docs/08-Panel\\_Reports/10\\_JPP\\_Concerns\\_Fair\\_MJ\\_Report\\_Final\\_20170915.pdf](http://jpp.whs.mil/public/docs/08-Panel_Reports/10_JPP_Concerns_Fair_MJ_Report_Final_20170915.pdf).

168 10 U.S.C. § 946 (2019).

the Secretary of Defense on this issue in September 2018. The chapter concludes by summarizing the response that the Committee received from the DoD Office of General Counsel regarding the Committee's Article 140a recommendations, which is included in its entirety at Appendix K. The response included a copy of the uniform standards and criteria issued by DoD to the Secretaries of the Military Departments on December 17, 2018, in compliance with the statutory deadline, included here at Appendix L.

## II. INFORMATION RECEIVED BY THE DAC-IPAD CONCERNING THE COLLECTION OF SEXUAL ASSAULT CASE DATA

Article 140a directs the military to adopt best practices used by federal and state criminal courts for data collection and case management, to the extent practicable.<sup>169</sup> Given this statutory directive, the Committee invited experts from the Administrative Office of the United States Courts and the United States Sentencing Commission to explain to the Committee at a public meeting how the federal courts developed their modern and efficient system—known as the Case Management Electronic Case Filing System (CM/ECF)—for managing cases and analyzing data. This system, which has been in place since 2001, is used by all federal district, appellate, and bankruptcy courts to manage every step in the processing of a federal criminal or civil case from its inception. The CM/ECF system enables judges, attorneys, clerk's office staff, and the parties to electronically file motions, file briefs, and access other case-related documents.<sup>170</sup> The Judicial Electronic Public Access Program works in conjunction with CM/ECF to facilitate access to court records and court information by parties and the general public.<sup>171</sup> The public-facing component of the judiciary's case management system is called Public Access to Court Electronic Records (PACER), which in broad terms balances the public's right to access the federal courts with the courts' obligation to protect sensitive information in conformity with national policies, rules, and procedures for safeguarding individuals' private and identifying information.<sup>172</sup> Collectively, these programs manage and uniformly track the processing of hundreds of thousands of cases each year across 94 distinct federal districts.

The United States Sentencing Commission (or "Sentencing Commission") is an independent agency within the federal judiciary that establishes sentencing policies and practices for the federal courts, advises Congress and the executive branch on developing crime policy, and researches and distributes a broad array of information and statistics on federal crime and sentencing issues.<sup>173</sup> Its members, known as commissioners, are appointed by the President and confirmed by the United States Senate, and they include federal appellate and district court judges, professors, and representatives from the Office of the Attorney General for the United States and the United States Parole Commission. Central to the Sentencing Commission's work is its research on sentences imposed by the federal courts, and that research is facilitated by a sophisticated system for collecting and

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169 The DAC-IPAD did not review best practices for Art. 140a(3), which requires "timely, efficient, and accurate production and distribution of records of trial within the military justice system."

170 *Transcript of DAC-IPAD Public Meeting 9* (Apr. 20, 2018) (testimony of Ms. Margaret McCaleb, Project Director for the Next Generation of the Case Management/Electronic Case Files (CM/ECF) system at the Administrative Office of the U.S. Courts).

171 *Id.* at 42 (testimony of Mr. Wendell Skidgel, Senior Attorney for the Electronic Public Access Program at the Administrative Office of the United States Courts). *See also* <https://www.pacer.gov/>.

172 *Id.*

173 *See* Sentencing Reform Act of 1984, 28 U.S.C. §§ 991–98 (2018). *See also* Written Remarks to the DAC-IPAD from Mr. Glenn Schmitt, Director, Office of Research and Data, United States Sentencing Commission 1 (Apr. 20, 2017) [hereinafter Schmitt Written Remarks], *available at* [https://dacipad.whs.mil/images/Public/10-Reading\\_Room/02\\_DACIPAD\\_Mtg\\_Materials/DACIPAD\\_Meeting\\_Materials\\_20180420.pdf](https://dacipad.whs.mil/images/Public/10-Reading_Room/02_DACIPAD_Mtg_Materials/DACIPAD_Meeting_Materials_20180420.pdf).

analyzing data elements from court documents. From the court documents generated in every federal criminal case, the Sentencing Commission extracts information about felony defendants, the statutes of conviction, the applicable provisions of the federal sentencing guidelines, and the type and length of the sentence imposed.<sup>174</sup>

The Sentencing Commission's comprehensive, document-driven research methods generate valuable, verifiable, and accurate data that are regularly utilized by policymakers and academics undertaking social science research and crafting criminal law and policy. Thus its research methods illustrate best practices for collecting and analyzing criminal case data. First, as a result of the statutory mandate that courts provide certain case documents directly to the Sentencing Commission, its data derive from the universe of federal felony convictions and sentences, rather than from a sample set or selective submissions from the courts. Second, the data are extremely accurate because they are captured directly from court documents and entered into an electronic database by highly trained Sentencing Commission staff, whose full-time occupation is data entry and analysis, and because rigorous quality control is maintained. Third, the Sentencing Commission's data are thorough because Congress has specifically and continuously funded its extensive research efforts. Fourth, the staff are experts with advanced degrees in criminology and research methods, so the data are collected with a view toward anticipating questions and issues from the commissioners, the courts, and Congress.<sup>175</sup>

The Committee also heard testimony from each of the Services concerning their current case management practices and received written responses to requests for information regarding how they document, aggregate, and analyze military justice case data. Each Military Service uses an independent electronic case management system to manage active cases and aggregate data involving its own military justice actions. Trial counsel and paralegals with knowledge of individual cases are primarily responsible for personally entering information into these systems, and military justice managers in the field rely on that information to manage caseloads in each jurisdiction. Notably, these systems vary in the scope and detail of the data gathered—some collect information on every active sexual assault investigation, while others monitor cases through the appellate process, and yet others do neither. The Services may use different terms to describe and implement the same provision of the UCMJ, and in most cases they do not upload documents to their systems for reference. They were unanimous, however, in attesting to the cumbersome process of responding to ad hoc queries regarding sexual assault cases from various stakeholders, including DoD, Congress, and the public—a process in which their case management systems may be of limited benefit, depending on the specificity and breadth of the request for information.

### III. DISCUSSION AND ANALYSIS

A fundamental component of the Sentencing Commission's approach is its reliance on standardized case documents for information. These documents are created to reflect, or effect, the very process that they describe—for example, the initiation of a criminal investigation, the formal charging document, or the outcome of a court-martial. The Committee recognizes that there may be limitations to collecting data solely from select standard investigative and procedural case documents, which may not contain some information that is useful to know about a sexual assault case. However, this approach makes it possible to gather accurate, verifiable data on many important aspects of the military justice system in a way that does not make excessive demands on military justice personnel. Relying on procedural case documents, analysts can effectively identify specific topic

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<sup>174</sup> Schmitt Written Remarks, *supra* note 173, at 2.

<sup>175</sup> *Id.*

areas for further investigation, and a more targeted review of other documents or sources of information can follow, as needed.

Centralizing the document collection within a single organization, and placing one team of experts in charge of data entry and analysis, helps foster both accountability for producing documents and consistency in the interpretation of those documents across all of the Services. Producing analyses from case documents on a recurring basis throughout the year, as the Sentencing Commission does, would serve two purposes for the military: provide transparency to stakeholders and avoid the overly cumbersome and lengthy document or data searches often involved in annual and ad hoc reviews.

The Article 140a standards and criteria should include information about every sexual assault allegation made against a Service member under the military's jurisdiction that is investigated by the military criminal investigative organizations (MCIOs). For purposes of data collected under Article 140a, "sexual assault cases" should include offenses involving both adult and child victims, and should encompass unwanted sexual act and contact offenses, so that DoD, lawmakers, and the public can better understand the nature of sexual violence occurring in the military. Of significant note, the DAC-IPAD's review of sexual assault cases indicates that annually, a majority of the cases involving allegations of penetrative sexual assault are not selected for prosecution.<sup>176</sup> Therefore, it is extremely important that data collection efforts include cases resolved outside the court-martial process as well as those in which charges are preferred or tried by court-martial. Failing to include the cases that do not result in courts-martial would omit a considerable amount of information about how most sexual assault cases progress through the military justice system and about the factors that influence their outcomes. Moreover, the Committee appreciates the significant impact of a criminal investigation on the lives and careers of both the victim and the accused, regardless of the ultimate disposition of the case, and recognizes that having comprehensive data regarding the investigative process in all such cases can contextualize those effects.

Collecting information about sexual assault cases that are investigated and closed without action may present more challenges than analyzing only information in court-martial documents. However, those difficulties should not deter DoD from systematically collecting reliable information about cases that do not result in disciplinary action. Failing to do so would leave a substantial void in any analysis of the processing of all cases that include an MCIO investigation.

Although there are differences among the Service MCIOs, each MCIO has a routine method of recording details about the initial complaint of sexual assault received by law enforcement and documenting the commander's decision as to the disposition of the sexual assault case. The Committee sees in these documents an opportunity for DoD to capture descriptive data useful for the purposes of Article 140a, and recommends that DoD explore ways to record such information consistently across all the Services in order to streamline the documents needed to collect information under Article 140a.<sup>177</sup>

The Committee notes that the experience of the federal district courts and many other jurisdictions illustrates the benefits of operating a common data collection system, which make it well worth overcoming the inherent challenges faced by an organization undertaking any large-scale transition.

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<sup>176</sup> DAC-IPAD 2018 ANNUAL REPORT, *supra* note 4, at 23.

<sup>177</sup> FY19 NDAA, *supra* note 5, § 535.

#### **IV. DAC-IPAD RECOMMENDATIONS REGARDING ARTICLE 140a, UCMJ PROVIDED TO THE SECRETARY OF DEFENSE ON SEPTEMBER 13, 2018**

After hearing testimony and reviewing extensive written information regarding best practices for implementing Article 140a, UCMJ, on September 13, 2018, the Committee made the following recommendations to the Secretary of Defense:<sup>178</sup>

**DAC-IPAD Recommendation 8:** The uniform standards and criteria developed to implement Article 140a, UCMJ, should reflect the following best practices for case data collection:

- a. Collect all case data only from standardized source documents (legal and investigative documents) that are produced in the normal course of the military justice process, such as the initial report of investigation, the commander's report of disciplinary or administrative action, the charge sheet, the Article 32 report, and the Report of Result of Trial.
- b. Centralize document collection by mandating that all jurisdictions provide the same procedural documents to one military justice data office/organization within DoD.
- c. Develop one electronic database for the storage and analysis of standardized source documents, and locate that database in the centralized military justice data office/organization within DoD.
- d. Collect and analyze data quarterly to ensure that both historical data and analyses are as up-to-date as possible.
- e. Have data entered from source documents into the electronic database by one independent team of trained professionals whose full-time occupation is document analysis and data entry. This team should have expertise in the military justice process and in social science research methods, and should ensure that the data are audited at regular intervals.

**DAC-IPAD Recommendation 9:** The source documents referenced in DAC-IPAD Recommendation 8 should contain uniformly defined content covering all data elements that DoD decides to collect to meet the requirements of Articles 140a and 146, UCMJ.

**DAC-IPAD Recommendation 10:** The data produced pursuant to Article 140a, UCMJ, should serve as the primary source for the Military Justice Review Panel's periodic assessments of the military justice system, which are required by Article 146, UCMJ, and as the sole source of military justice data for all other organizations in DoD and for external entities.

**DAC-IPAD Recommendation 11:** Article 140a, UCMJ, should be implemented so as to require collection of the following information with respect to allegations of both adult-victim and child-victim sexual offenses, within the meaning of Articles 120, 120b, and 125, UCMJ (10 U.S.C. §§ 920, 920b, and 925 (2016)):

- a. A summary of the initial complaint giving rise to a criminal investigation by a military criminal investigative organization concerning a military member who is subject to the UCMJ, and how the complaint became known to law enforcement;

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<sup>178</sup> See Appendix J, Letter from DAC-IPAD to the Secretary of Defense Regarding Article 140a, Uniform Code of Military Justice (Sept. 13, 2018). The recommendations here have been renumbered in conformity with this annual report.

- b. Whether an unrestricted report of sexual assault originated as a restricted report;
- c. Demographic data pertaining to each victim and accused, including race and sex;
- d. The nature of any relationship between the accused and the victim(s);
- e. The initial disposition decision under Rule for Court-Martial 306, including the decision to take no action, and the outcome of any administrative action, any disciplinary action, or any case in which one or more charges of sexual assault were preferred, through the completion of court-martial and appellate review;
- f. Whether a victim requested an expedited transfer or a transfer of the accused, and the result of that request;
- g. Whether a victim declined to participate at any point in the military justice process;
- h. Whether a defense counsel requested expert assistance on behalf of a military accused, whether those requests were approved by a convening authority or military judge, and whether the government availed itself of expert assistance; and
- i. The duration of each completed military criminal investigation, and any additional time taken to complete administrative or disciplinary action against the accused.

**DAC-IPAD Recommendation 12:** The Services may retain their respective electronic case management systems for purposes of managing their military justice organizations, provided that

- a. The Services use the same uniform standards and definitions to refer to common procedures and substantive offenses in the Manual for Courts-Martial, as required by Article 140a; and
- b. The Services develop a plan to transition toward operating one uniform case management system across all of the Services, similar to the federal judiciary's Case Management/Electronic Court Filing (CM/ECF) system.

## **V. DOD RESPONSE TO DAC-IPAD RECOMMENDATIONS REGARDING ARTICLE 140a, UCMJ**

The Senior Deputy General Counsel and Deputy General Counsel for Personnel and Health Policy for the Department of Defense provided a response letter to the DAC-IPAD's recommendations regarding Article 140a, received on January 23, 2019, and provided at Appendix K. He noted that while the DAC-IPAD's study and analysis helped inform the standards that were adopted, it would be inadvisable to adopt the DAC-IPAD's proposal without first conducting a pilot program to assess the proposed standards' operation and the personnel and fiscal requirements it would create.

A key issue appeared to be the resource requirements for such a proposal and the potential for failure. The senior deputy general counsel relayed his calculation that if the Department were to adopt the model utilized by the Sentencing Commission, it would involve processing nearly the same volume of documents as is currently handled by the Sentencing Commission. He then looked at the U.S. Sentencing Commission as the model for resource requirements as well as the methodology to be followed.

DoD found that the Sentencing Commission employs a staff of 50 employees to manage all of the documents, data entry, and analysis it processes, compared to only 44 authorized attorney billets in the entire DoD Office of General Counsel. The senior deputy general counsel also expressed concern that DoD would require an even larger staff than the Sentencing Commission because of the lack of uniformity of case documentation across the Services, unlike the federal courts system, which has a very high degree of uniformity.

Finally, he conveyed the concern expressed by the Services that the DAC-IPAD proposal would interfere with their ability to assess changes in the military justice system over time and conduct other analyses of military justice data.

In spite of the current reservations, the senior deputy general counsel did leave the door open to reconsideration in the future. He advised that the sentencing data collection requirement of the soon-to-be-formed Military Justice Review Panel may provide an opportunity to assess on a smaller scale the personnel and fiscal demands that a system like the one proposed by the DAC-IPAD would create. He noted that once such information is obtained, it may be possible for DoD to evaluate the DAC-IPAD's proposal for Article 140a, UCMJ, with a better understanding of the resources it would require and the likelihood of its success or failure.

## **VI. ARTICLE 140a STANDARDS AND CRITERIA ISSUED BY THE GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE ON DECEMBER 17, 2018**

In a memorandum to the Secretaries of the Military Departments and the Judge Advocate General of the Coast Guard dated December 17, 2018, the DoD General Counsel officially promulgated the Department's uniform standards and criteria for the military justice system, to be implemented no later than December 23, 2020. The complete memorandum, including the standards for accessibility and data points to be collected, is provided at Appendix L.

Most notably, the new standards direct each Service to maintain and operate a military justice case processing and management system that will track every case opened by military law enforcement in which a Service member is identified as a subject until completion through the final disposition within the military justice system, including direct appellate review. The Services are allowed but not required to operate their systems in conjunction with one another. The systems are required to maintain all data collected indefinitely to ensure complete and accurate reporting.

In addition to prescribing standards, the DoD General Counsel issued 155 specific data points and certain uniform definitions that each case processing and management system must utilize and track. The uniform data points include identifying criminal offenses by the appropriate Defense Incident-Based Reporting System (DIBRS) Codes utilized by law enforcement in reporting crime data to federal databases and following the Office of Management and Budget Statistical Policy Directive No. 15 (OMB 15), Race and Ethnic Standards for Federal Statistics and Administrative Reporting.

## **VII. ASSESSMENT OF DOD RESPONSE TO DAC-IPAD RECOMMENDATIONS REGARDING ARTICLE 140a, UCMJ**

**DAC-IPAD Assessment:** The Committee is very pleased that DoD is open in the future to further evaluation and consideration of its recommendation of a centralized, document-based military justice data collection system. The Committee will continue to collect and analyze sexual assault case adjudication data until its term ends and is hopeful that the Military Justice Review Panel required to be established in accordance with Article 146, UCMJ will continue and expand the sexual assault case adjudication data project.



## CHAPTER 4. THE DEPARTMENT OF DEFENSE EXPEDITED TRANSFER POLICY AND RELATED ISSUES

### I. INTRODUCTION

In its March 2018 Annual Report, the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) provided an overall assessment of the Department of Defense (DoD) expedited transfer policy. The Committee found that the policy is an important sexual assault response initiative offered by the military and strongly recommended that it be continued and further improved.<sup>179</sup>

The Committee also analyzed two issues associated with the expedited transfer policy: (1) many Service members have a mistaken perception that victims abuse the policy, and (2) active duty Service member spouses and intimate partners covered by the Family Advocacy Program (FAP) are excluded from the DoD-level expedited transfer policy. The Committee made four recommendations addressing these issues.<sup>180</sup>

The Committee made interim assessments of six other issues related to the expedited transfer policy and asked the Policy Working Group (PWG), a working group consisting of seven DAC-IPAD members, to continue to review them:<sup>181</sup>

Issue 1: The expedited transfer option is not available to Service members who make restricted sexual assault reports.

Issue 2: Inadvertent disclosures by victims to their commands of sexual assaults and reports of sexual assault made by third parties deny Service members the opportunity to make a restricted report and protect their privacy, if they so desire.

Issue 3: The approval standard and the purpose of DoD's expedited transfer policy are not sufficiently clear or comprehensive.

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179 See DAC-IPAD 2018 ANNUAL REPORT, *supra* note 4, at 66.

180 *Id.* at 68–69, 71. The four recommendations are

DAC-IPAD Recommendation 1: The Secretary of Defense, the Secretary of Homeland Security, and the Services take action to dispel the misperception of widespread abuse of the expedited transfer policy, including addressing the issue in the training of all military personnel.

DAC-IPAD Recommendation 2: The Secretary of Defense and the Secretary of Homeland Security identify and track appropriate metrics to monitor the expedited transfer policy and any abuses of it.

DAC-IPAD Recommendation 3: The DoD-level and Coast Guard equivalent Family Advocacy Program (FAP) policy include provisions for expedited transfer of active duty Service members who are victims of sexual assault similar to the expedited transfer provisions in the DoD Sexual Assault Prevention and Response (SAPR) policy and consistent with 10 U.S.C. § 673.

DAC-IPAD Recommendation 4: The DoD-level military personnel assignments policy (DoD Instruction 1315.18) and Coast Guard equivalent include a requirement that assignments personnel or commanders coordinate with and keep SAPR and FAP personnel informed throughout the expedited transfer, safety transfer, and humanitarian/compassionate transfer assignment process when the transfer involves an allegation of sexual assault.

181 *Id.* at 71–74 (differently ordered).

Issue 4: The expedited transfer policy includes temporary or permanent intra-installation moves as well as moves to new installations or locations.

Issue 5: The expedited transfer policy is limited to Service members who are victims of sexual assault and does not include Service members whose civilian spouses or children are sexual assault victims, even though all may face exactly the same difficult situations at the installation or may equally benefit from moves to a new location.

Issue 6: Some active duty Service members who are sexually assaulted are not able to successfully return to duty even after an expedited transfer, because their need for transitional assistance is not met.

The PWG reviewed one additional issue:

Issue 7: The Department of Defense and Services collect only limited expedited transfer data on victims of sexual assault and collect no data on transfers of subjects.<sup>182</sup>

These seven issues, as well as a discussion of expedited transfers at the Service academies and in the Reserves and National Guard, are reviewed in Sections IV to XI, below.

## II. METHODOLOGY

During the October 2017 DAC-IPAD public meeting and the December 2017 and May 2018 PWG preparatory sessions, numerous presenters from DoD and the Services provided information about the expedited transfer policy and perspectives on its benefits and limitations. The DAC-IPAD and PWG received information and perspectives from mid-level commanders and senior enlisted leaders, special court-martial convening authorities, two panels of experienced special victims' counsel (SVCs) and victims' legal counsel (VLCs) and SVC and VLC program managers, representatives of the DoD Sexual Assault Prevention and Response Office (SAPRO) and Service Sexual Assault and Response (SAPR) program managers, experienced special victim prosecutors, sexual assault response coordinators (SARCs), defense counsel organization chiefs or their representatives, and military criminal investigative organization (MCIO) representatives. Importantly, the PWG also heard from a panel of active duty sexual assault victims who had received expedited transfers and who were willing to share their experiences.

In addition, in response to a request for information (RFI), the DAC-IPAD received information and data from each of the Services on all expedited transfer requests submitted in fiscal year 2016 as well as sexual assault-related transfers of accused Service members.<sup>183</sup>

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182 *See id.* at 68. This issue is related to DAC-IPAD Recommendation 2 from the DAC-IPAD 2018 ANNUAL REPORT: "The Secretary of Defense and the Secretary of Homeland Security identify and track appropriate metrics to monitor the expedited transfer policy and any abuses of it."

183 *See* Service responses to DAC-IPAD Request for Information Set 4 (Sept. 11, 2017), available at [https://dacipad.whs.mil/images/Public/07-RFIs/Set\\_4/DACIPAD\\_RFI\\_Set4\\_Q1\\_6\\_Responses\\_1\\_3\\_and\\_5\\_20170911\\_Web\\_Ready\\_Amended.pdf](https://dacipad.whs.mil/images/Public/07-RFIs/Set_4/DACIPAD_RFI_Set4_Q1_6_Responses_1_3_and_5_20170911_Web_Ready_Amended.pdf).

### III. OVERVIEW OF THE EXPEDITED TRANSFER POLICY

The current DoD expedited transfer policy is found in DoD Instruction (DoDI) 6495.02, “Sexual Assault Prevention and Response (SAPR) Program Procedures”:<sup>184</sup> it implements 10 U.S.C. § 673, which applies to all active duty Service members who are victims of sexual assault. The DoD policy applies only to active duty Service members who have made an unrestricted report of sexual assault; notably, the policy expressly excludes sexual assault victims covered under FAP policy as well as Service members who make a restricted report of sexual assault.<sup>185</sup>

The purpose of the DoD expedited transfer policy is to address “situations where a victim feels safe, but uncomfortable,” such as instances when a victim experiences ostracism or retaliation as a result of the sexual assault report.<sup>186</sup> The intent behind the policy is to assist the victim’s recovery by moving him or her to a new location, where no one knows of the sexual assault.<sup>187</sup>

The DoD expedited transfer policy also

1. Applies only when an eligible service member files a credible report, and establishes a presumption in favor of transferring an eligible Service member who files a “credible report.”
2. Defines “credible report” as either a written or verbal report, made in support of an expedited transfer, that is determined to have credible information. “Credible information” is defined as information that, when the source and nature of the information and the totality of the circumstances are considered, is sufficiently believable that the fact or facts in question can be presumed to be true.
3. Requires a commanding officer (CO) to make a determination to approve or disapprove a request for transfer within 72 hours of receipt of the request.
4. Requires that if the initial request is disapproved, the requesting Service member be given an opportunity to appeal to the first general or flag officer in the chain of command, who then must make a decision within 72 hours of receiving the appeal.
5. Requires the CO or appropriate approving authority to provide his or her reasons for and justification of the transfer based on a “credible report” of sexual assault and consideration of 10 additional factors.

Those 10 additional factors are (1) the reason for the request, (2) the potential transfer of the subject instead of the requesting Service member, (3) the nature and circumstances of the offense, (4) whether a temporary transfer would meet the needs of the requester and the unit, (5) the training status of the requester, (6) the availability of positions within other units on the installation, (7) the status of and impact on the investigation and the disposition of the offense (after consultation with the MCIOs), (8) the location of the subject, (9) whether the subject is civilian or military, and (10) “other pertinent circumstances or facts.”<sup>188</sup>

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184 See generally DoDI 6495.02, *supra* note 53, at encl. 5.

185 *Id.* at encl. 5, ¶ 6.b(2).

186 *Id.* at encl. 5, ¶ 6.a(2). Dr. Nate Galbreath and Ms. Dianna Rangoussis from DoD SAPRO explained in testimony to the DAC-IPAD that emergency safety transfers are available for those who are at risk of imminent harm.

187 *Id.*

188 *Id.* at encl. 5, ¶ 6b(8).

The DoD expedited transfer policy also requires the CO to ask for and take into consideration the Service member's input before making a decision about the transfer and determining its location, if granted. Further, it notes that "in most circumstances, transfers to a different installation should be completed within 30 calendar days from the date the transfer is approved, and those that are on the same installation should be completed within one week of approval."<sup>189</sup>

## **IV. EXPANSION OF EXPEDITED TRANSFER TO RESTRICTED REPORTS**

### **A. DAC-IPAD Interim Assessment**

In its March 2018 annual report, the DAC-IPAD made the following interim assessment of this issue:

The DAC-IPAD believes that the development of a workable option allowing Service members who make restricted reports to request and receive expedited transfers without triggering an investigation would be beneficial for certain victims. The PWG will continue to explore this issue.<sup>190</sup>

### **B. Background and Testimony**

Under current DoD policy, sexual assault victims have the choice of filing a restricted or an unrestricted report. DoD policy, not the statute, requires that in order to request and receive an expedited transfer, the victim must file an unrestricted report.<sup>191</sup> The act of filing an unrestricted report, or electing to unrestrict a previously filed restricted report, triggers an investigation by the Service's MCIO. The victim may decline to participate in the investigation or prosecution of the case, though the investigation may continue, regardless of whether the victim participates.<sup>192</sup> During the course of the investigation, investigative agents may interview the victim's family members, friends, or co-workers, even in cases in which the victim wishes the assault to remain private.

In its June 2014 report to Congress and DoD, the Response Systems Panel—a federal advisory committee that preceded the DAC-IPAD in studying sexual assault in the Services—recommended that the Secretaries of the Military Departments create a means by which a sexual assault victim who filed a restricted report could request an expedited transfer without making the report unrestricted.<sup>193</sup> Referring to this recommendation, the Acting Under Secretary of Defense for Personnel and Readiness sent an October 21, 2015, memorandum to the Secretaries of the Military Departments allowing them to make an exception to policy that would permit victims who file restricted reports to receive expedited transfers.<sup>194</sup> To date, none of the Services has sought to exercise this option and DoD has not affirmatively implemented a policy allowing sexual assault victims who file restricted reports to request expedited transfers.

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189 *Id.* at encl. 5, ¶ 6b(4).

190 DAC-IPAD 2018 ANNUAL REPORT, *supra* note 4, at 71.

191 See 10 U.S.C. § 673; DoDI 6495.02, *supra* note 53, at ¶ 4(o).

192 DoDI 6495.02, *supra* note 53, at encl. 4, ¶ 1.c(1).

193 Response Systems Panel Recommendation 69: "Service Secretaries create a means by which sexual assault victims who file a restricted report may request an expedited transfer without having to make their report unrestricted." RSP REPORT, *supra* note 45, at 34.

194 See Memorandum from the Under Secretary of Defense on Exception to Policy Allowing the Military Services the Option to Provide Expedited Transfers to Adult Sexual Assault Victims Who File Restricted Reports (Oct. 21, 2015).

DoD and Service personnel who testified before the PWG had mixed reactions to the idea of allowing expedited transfers after a restricted report. A Coast Guard member who had received an expedited transfer told the PWG, “Overall, I think the expedited transfer was a good thing. I think that it should be an option for anyone that has a sexual assault case, whether it is restricted or unrestricted.”<sup>195</sup> This sentiment was echoed by several other members who spoke to the PWG, including an Air Force senior prosecutor and a SARC from the Coast Guard; the latter emphasized that having different reporting options benefits victims.<sup>196</sup>

But many of the presenters, from SARCs to prosecutors, SVCs and VLCs, and SAPR and FAP personnel, were opposed to the idea of expanding the expedited transfer policy in this way. One presenter mentioned the preference in DoD policy that victims file unrestricted reports so that judicial or other action could be pursued against the subjects, enabling the military to “stamp out” sexual assault.<sup>197</sup> One SARC argued that expedited transfer should remain a benefit only for those who file unrestricted reports. She also expressed concern that members who file restricted reports and receive expedited transfers might “slip through the cracks” upon transferring to a new installation and not make contact with the SARC or pursue mental health counseling.<sup>198</sup>

Several presenters also argued that opening up expedited transfers to those who file restricted reports will strengthen the perception among military members that the policy is being abused by members who file false reports to obtain transfers to locations they view as more favorable.<sup>199</sup> Ms. Diana Rangoussis, DoD SAPRO Senior Legislative and Policy Advisor, mentioned the DAC-IPAD’s recommendation from its March 2018 annual report that DoD and the Services provide training to military members to address the misperception that there is widespread abuse of the policy.<sup>200</sup>

Many presenters agreed that the current practice of having the victim unrestrict his or her report and then sign a statement declining to participate in the investigation works well for most victims.

Arguing that there is little demand for expedited transfers among those who make restricted reports, the Navy SAPR Program Director noted that to evaluate this issue, his office had reviewed data on victims who convert from restricted to unrestricted reports; it found that a smaller percentage of those victims requested expedited transfers than of victims who initially made unrestricted reports. In the Navy, about 30% of victims who file unrestricted reports request expedited transfers, while only about 15% of victims who convert from restricted to unrestricted reports request them.<sup>201</sup>

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195 See *Transcript of PWG Preparatory Session* 305 (Dec. 1, 2017).

196 See *id.* at 263–64 (testimony of Major Pete Havern, Senior Trial Counsel, U.S. Air Force); see also *Transcript of PWG Preparatory Session* 186–87 (May 24, 2018) (testimony of Mx. Angela Lakey, National Capital Region Sexual Assault Response Coordinator, U.S. Coast Guard).

197 *Transcript of PWG Preparatory Session* 79 (May 24, 2018) (testimony of Lieutenant Amanda Styles, Central Assignments Coordinator for the Aviation, Communication, and Prevention Career Fields, U.S. Coast Guard); DoDI 6495.02, *supra* note 53, at encl. 4, ¶ 1.

198 *Id.* at 81 (testimony of Ms. Erinn Izykowski, Section Head, Plans, Policy and Oversight, Sexual Assault Prevention and Response Program, U.S. Marine Corps).

199 *Id.* at 85 (testimony of Ms. Kimberly Lahm, Policy Branch Chief, Interpersonal Self-Directed Violence Response Program, U.S. Air Force); *id.* at 88 (testimony of Ms. Charlotte Cluverius, Deputy Chief of Staff, Victims’ Legal Counsel Program, U.S. Navy); *Transcript of PWG Preparatory Session* 264–65 (Dec. 1, 2017) (testimony of Lieutenant Commander Amanda Lee, Legal Service Command, Norfolk, VA, U.S. Coast Guard).

200 *Transcript of PWG Preparatory Session* 30 (May 24, 2018) (testimony of Ms. Diana Rangoussis, Senior Legislative and Policy Advisor, Sexual Assault Prevention and Response Office, U.S. Department of Defense).

201 *Id.* at 89–90 (testimony of Mr. Paul Rosen, Director, Sexual Assault Prevention and Response Program, U.S. Navy).

### C. Discussion

DoD policy should be consistent with applicable law. 10 U.S.C § 673, the statutory basis for the expedited transfer policy, applies to Service members who are victims of sexual assault, not solely to Service member victims who file unrestricted reports. DoD policy limiting eligibility for expedited transfers to victims who file unrestricted reports is inconsistent with this law.

Military sexual assault victims are frequently placed in the position of having to choose between filing a restricted report, which enables them to maintain their privacy but forces them to face the offender at work or on the installation, or unrestricted their report, which enables them to receive an expedited transfer away from the offender but makes it impossible to maintain their privacy if the MCIO interviews their friends and co-workers in the course of the investigation, as often occurs. Providing victims with the option of receiving an expedited transfer while filing a restricted report would alleviate this concern for victims who choose this option.

SVC and VLC program managers, SAPR personnel, and SARCs emphasized their overarching concern that allowing victims who file restricted reports to receive expedited transfers would strengthen the perception among Service members that the policy is being abused. The DAC-IPAD identified this misperception as a problem and made a recommendation to dispel it in the March 2018 DAC-IPAD Annual Report.<sup>202</sup> Today the misperception is based solely on reactions to victims who file unrestricted reports and request expedited transfers. Allowing victims who file restricted reports to request expedited transfers would do little to increase this misperception, because of the relatively small number of victims likely to be involved and the relatively small likelihood that other Service members would be aware of the restricted report.

In addition, many of these representatives felt that unrestricted reporting should be encouraged so that offenders could be held accountable. The DAC-IPAD believes that DoD should continue to afford victims the options of filing restricted or unrestricted reports without expressing a preference, including by encouraging a specific choice. The choice between the two options should rest completely with the victim. The DoD policy allowing restricted reporting, as well as the overwhelming support that witnesses before the DAC-IPAD have expressed for retaining that option, indicates a clear acceptance that the benefits of offering restricted reporting outweigh the disadvantage of not being able to hold the perpetrators in those cases accountable. The DAC-IPAD concurs.

Another concern expressed by some witnesses is that allowing victims who file restricted reports to receive expedited transfers could do them unintended harm. When a victim chooses restricted reporting, his or her chain of command and co-workers remain unaware of the assault, and thus rumors, ostracism, or retaliation within the unit is less likely. When a victim files an unrestricted report and requests an expedited transfer, he or she may face rumors at the gaining command about reasons for the transfer out of cycle and for frequent absences to keep various appointments, but the new commander and senior enlisted advisor can provide support, as they would be aware of the assault and the circumstances of the transfer. However, a victim who receives an expedited transfer after filing a restricted report might encounter the same problems without the possibility of support from the gaining commander or senior enlisted advisor, who would be unaware of the assault. The leadership at the new unit would expect the victim to be fully capable of performing his or her duties, including being deployment ready. This expectation may be unrealistic for some victims, who may still be processing the trauma of sexual assault.

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202 DAC-IPAD 2018 ANNUAL REPORT, *supra* note 4, at 68.

This unintended harmful consequence already exists, however. A victim who files a restricted report under current policy and a victim who might file a restricted report and receive an expedited transfer under a new policy would be similarly situated with their commands. Because no one in their commands would know they were sexual assault victims, their command leadership would not be able to provide the direct support available to a victim filing an unrestricted report. But if current policy is changed, a victim who files a restricted report would be able to receive an expedited transfer to a location removed from the perpetrator of the assault and closer to family and friends.

Moreover, it is possible that a victim who requests an expedited transfer after filing a restricted report might also request that more people be made aware of the assault. One option might be for the installation SARC to transmit the restricted expedited transfer request to the Service headquarters office responsible for assignment actions, from which the request would be forwarded to a designated commander at the headquarters for a decision. That decision authority would then contact the victim's commander to get input on the request and its effect on command, disclosing the assault only to the victim's commander and his or her senior enlisted advisor. No requirement that the commander report the incident to the MCIO would be triggered. Should the request be approved, the victim's commander and senior enlisted advisor at the gaining installation would also be made aware of the assault and the nature of the victim's transfer so that the victim would have the support needed to receive counseling. Again, the MCIO would not be informed. This option expands the number of people who are aware of the assault but does so by applying the same principle that governs current restricted reporting policy: notifying only those who can directly help the victim recover from the assault.

In this scenario, the facts of the case—including the identity of the subject—could remain restricted and not be provided to commanders and senior enlisted advisors at either installation. Therefore, the provision in DoD policy that allows a commander to consider moving the subject rather than the victim would not be available (although that provision could be made part of the designated commander's decision-making process). However, some additional information might have to be provided to the decision authority at the Service headquarters so that he or she could make a judgment based on more than the victim's assertion that a sexual assault has occurred, unless that assertion is considered sufficient to deem a report credible. Currently, a mere assertion is considered sufficiently credible to trigger restricted reporting, assistance by a SARC and victim advocate (VA), and medical assistance as needed.

One significant factor that would have to be understood and weighed by victims who file restricted reports and are considering requesting an expedited transfer is that the more people who know about the expedited transfer, the more likely it is that others will realize that the victim suffered a sexual assault. Indeed, the public aspects of an expedited transfer—its speed and often the victim's absence from the gaining command while receiving help in recovering from the trauma of the assault—will lead others to suspect its cause. To enable the victim to make a fully informed choice, his or her SVC or VLC, or the SARC, would have to fully explain the inherent limitations as well as the benefits of such a policy.

#### **D. Findings and Recommendation**

**Finding 26:** 10 U.S.C § 673, the statutory basis for the expedited transfer policy, applies to Service members who are victims of sexual assault, not solely to Service member victims who file unrestricted reports. DoD policy limiting eligibility for expedited transfers to victims who file unrestricted reports is inconsistent with this law.

**Finding 27:** Under current DoD policy, a sexual assault victim who files a restricted report and wants to transfer to a location closer to family and friends, or who wants to get away from the Service member who assaulted him or her, has no way to request a transfer that will help in the healing process except after filing an unrestricted report. Filing an unrestricted report to request an expedited transfer may lead to the victim's suffering the same negative consequences, such as the loss of privacy, that he or she sought to avoid by initially filing a restricted report.

**Finding 28:** Filing an unrestricted report in order to request an expedited transfer triggers a full investigation of the allegation even if the victim does not want the case investigated or prosecuted. A sexual assault victim may elect not to participate in the investigation or prosecution of the case after unrestricting his or her report, but the case may proceed regardless of the victim's wishes.

**Finding 29:** The Response Systems Panel, in its June 2014 report, recommended that the Secretaries of the Military Departments create a means by which a sexual assault victim who filed a restricted report could request an expedited transfer without making that report unrestricted.

- a. In an October 21, 2015, Exception to Policy memo to the Secretaries of the Military Departments, the Acting Under Secretary of Defense for Personnel and Readiness allowed the Services to proceed with such an exception to the current expedited transfer policy set forth in DoDI 6495.02. This memo expresses support for allowing sexual assault victims who file restricted reports to request expedited transfers, but does not change DoD policy to allow for it or provide the implementing procedures for how to accomplish this goal.
- b. In the three years since this memo was released, none of the Services has requested such an exception to policy, and it seems increasingly unlikely that they will do so without explicit direction from DoD.

**DAC-IPAD Recommendation 13:** The Secretary of Defense (and the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) expand the expedited transfer policy to include victims who file restricted reports of sexual assault. The victim's report would remain restricted and there would be no resulting investigation. The DAC-IPAD further recommends the following requirements:

- a. The decision authority in such cases should be an O-6 or flag officer at the Service headquarters organization in charge of military assignments, rather than the victim's commander.
- b. The victim's commander and senior enlisted leader, at both the gaining and losing installations, should be informed of the sexual assault and the fact that the victim has requested an expedited transfer—without being given the subject's identity or other facts of the case—thereby enabling them to appropriately advise the victim on career impacts of an expedited transfer request and ensure that the victim is receiving appropriate medical or mental health care.
- c. A sexual assault response coordinator, victim advocate, or special victims' counsel (SVC) / victims' legal counsel (VLC) must advise the victim of the potential consequences of filing a restricted report and requesting an expedited transfer, such as the subject not being held accountable for his or her actions and the absence of evidence should the victim later decide to unrestrict his or her report.

## V. VICTIMS' OPTIONS REGARDING SEXUAL ASSAULT REPORTS MADE BY THIRD PARTIES

### A. DAC-IPAD Interim Assessment

In its March 2018 annual report, the DAC-IPAD made the following interim assessment of this issue:

**DAC-IPAD Interim Assessment:** The DAC-IPAD believes that victims who lose the ability to make a restricted report, whether because of third-party reports or because they are unaware of the consequences of reporting to a member of their chain of command, may benefit from being able to restrict further disclosure or investigation of the incident if they wish to protect their privacy. The PWG will continue to explore this issue.<sup>203</sup>

### B. Background and Testimony

Under DoD policy, an adult victim of sexual assault who chooses to report the assault has two options: making a restricted report or making an unrestricted report. An unrestricted report triggers an investigation by the MCIO, while a restricted report does not.<sup>204</sup> A member who files a restricted report may later elect an unrestricted report, but an unrestricted report may not later be changed to restricted.

Under DoD policy, a victim can disclose his or her sexual assault to a roommate, family member, or friend and still make a restricted report. However, if the victim discloses the assault to someone in his or her chain of command or to a DoD law enforcement member, that person must report the assault to the MCIO and the victim no longer has the option of filing a restricted report.<sup>205</sup> In addition, if a third party discloses the assault to a member of law enforcement or to someone in the victim's chain of command, even without the victim's consent, that individual must report the assault to the MCIO and the victim will no longer have the option of filing a restricted report.<sup>206</sup> Once informed of the allegation, the MCIO will initiate an investigation. In most cases, the victim has the option of declining to participate in the investigation or prosecution of the case but cannot stop the case from proceeding.<sup>207</sup>

Unlike DoD policy, Coast Guard policy mandates that when a Service member or Coast Guard civilian employee who is not an individual designated to receive a restricted report—that is, who is not a SARC, VA, or health care professional—becomes aware that a sexual assault has or may have occurred, that information is unrestricted and the individual must notify his or her chain of command or SARC within 24 hours.<sup>208</sup> There

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203 DAC-IPAD 2018 ANNUAL REPORT, *supra* note 4, at 74.

204 DoDI 6495.02, *supra* note 53, at encl. 4, ¶ 1.a–b.

205 *Id.* at encl. 4, ¶ 1.e(1).

206 *Id.* at encl. 4, ¶ 1.f (If the victim has already filed a restricted report prior to the third-party report, the victim's report will remain restricted; however, the MCIO will begin an investigation based on the independent report.).

207 *Id.* at encl. 4, ¶ 1.c(1).

208 U.S. Coast Guard Commandant Instruction (COMDTINST) M1754.10E, SEXUAL ASSAULT PREVENTION AND RESPONSE (SAPR) PROGRAM (Dec. 2016), Chap. 4, ¶ B.1.

is no exception for disclosure to a friend, roommate, or family member. Like DoD policy, Coast Guard policy allows a victim to decline to participate in the investigation but states that the investigation may continue.<sup>209</sup>

At the October 2017 DAC-IPAD public meeting, two commanders serving as special court-martial convening authorities told the Committee that they would change the system to enable sexual assault victims who have lost the ability to make restricted reports, whether because of third-party reports or because of their inadvertent disclosure of the assault to a mandatory reporter, to restrict further disclosure or investigation of the incident.<sup>210</sup>

Service MCIO representatives testified about this issue at the PWG preparatory session held on May 24, 2018. The MCIO representatives stated that in a scenario in which the victim did not want to cooperate with the investigation, such as an investigation triggered by a third-party report, they would continue to investigate their leads to a logical conclusion. They agreed that if they lacked the name of the subject and had few other facts about the case, the investigation would likely not go very far.<sup>211</sup>

Mr. Kevin Poorman, Associate Director of Criminal Investigations for the Air Force Office of Special Investigations (AFOSI), told the PWG that about one year ago, the AFOSI developed a process that allows it, in certain limited circumstances, to accede to the victim's request to not investigate a sexual assault offense. AFOSI agents can exercise this discretion only when they don't know the identity of the subject or the location of the offense; the victim must also have met with an SVC and signed a statement declining to participate in the investigation.<sup>212</sup> Mr. Poorman described the SVC community as supportive of this policy, but added that if agents are provided the name of the subject or other leads to pursue, they will continue the investigation.<sup>213</sup> Noting that the victim's desire for privacy must be balanced against society's need to pursue justice,<sup>214</sup> he observed that he would be extremely reluctant to drop an investigation involving a named offender, knowing that the individual might reoffend and that this risk would be unacceptable to commanders.<sup>215</sup>

Testimony provided by MCIO agents to the DAC-IPAD's Case Review Working Group during its March 2018 preparatory session confirmed the Service policies that allow them to close a case if there is no identifiable offender and no other leads to follow.<sup>216</sup> One MCIO agent said he was torn between wanting to investigate every case to its full extent and wanting to respect the victim's wish for privacy. He wondered whether they were doing the victim a disservice by possibly causing additional trauma in pursuing the investigation, but he also declared

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209 *Id.* at Chap. 4, ¶ B.5.a.

210 *See Transcript of DAC-IPAD Public Meeting* 214–15 (Oct. 20, 2017) (testimony of Captain John Bushey, Commander, Naval Installations Command, Director of Public Safety, U.S. Navy); *id.* at 217 (testimony of Captain Brett Millican, Commanding Officer, U.S. Coast Guard Base Boston, U.S. Coast Guard).

211 *Transcript of PWG Preparatory Session* 320–22 (May 24, 2018) (testimony of Mr. Michael DeFamio, Division Chief, Family and Sexual Violence Division, U.S. Naval Criminal Investigative Service); *id.* at 323 (testimony of Ms. Beverly Vogel, Sex Crimes Program Manager, U.S. Coast Guard Criminal Investigative Service); *id.* at 339–40 (testimony of Mr. Guy Surian, Deputy Chief, Investigative Operations, Investigative Policy, and Criminal Intelligence, U.S. Army Criminal Investigative Division).

212 *Id.* at 325–28 (testimony of Mr. Kevin Poorman, Associate Director, Criminal Investigations, U.S. Air Force Office of Special Investigations).

213 *Id.* at 328.

214 *See id.*

215 *Id.* at 329, 331.

216 *Transcript of CRWG Preparatory Session* 157 (Mar. 6, 2018) (testimony of Special Agent Ernest Slatinsky, Chief of Quality Assessments, U.S. Air Force Office of Special Investigations).

that if they don't investigate the case when it is reported, important details may be lost.<sup>217</sup> Another MCIO agent stated, "I think we need to entertain allowing that victim still, irrespective to who they spoke to, a cop or not or a friend, to make a decision as to being restricted or unrestricted."<sup>218</sup> Two other MCIO agents offered a contrary view, observing that the decision to pursue all leads to their logical conclusion is helpful when a victim decides, often after some time has passed, that he or she wants to have the case investigated and prosecuted. Because the MCIO has interviewed witnesses relatively soon after the commission of the alleged offense, the information gathered is more accurate.<sup>219</sup>

The Service MCIOs also expressed reluctance to allow their field agents too much discretion regarding how thoroughly they conduct their investigations.<sup>220</sup> They worried about going back to a time when investigators could make an independent judgment that a case is not worth pursuing or that the victim is lying, leaving them open to later criticism.<sup>221</sup>

Several SAPR representatives mentioned the "You Have Options" program initiated by the Ashland, Oregon, police department and now implemented by a number of police departments throughout the country. This program allows varying levels of sexual assault reporting, from an anonymous report to a full report leading to a complete investigation.<sup>222</sup> A victim can speak to a law enforcement officer anonymously in order to discuss reporting options; after a report is made, he or she can reverse that decision and request that the suspect and witnesses not be interviewed.<sup>223</sup>

A number of presenters expressed frustration that even in cases in which the victim declines to participate in the investigation, the MCIO conducts a full investigation,<sup>224</sup> which includes interviewing the victim's co-workers, friends, or family members. This often happens in cases in which a third party reports without the victim's consent to the disclosure and the victim wishes to maintain his or her privacy. Without the victim's cooperation, these cases typically result in no action being taken against the subject.

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217 *Id.* at 159.

218 *Id.* at 161 (testimony of Special Agent Clarence Joubert III, Supervisory Special Agent and Program Manager for the Special Victim Unit, U.S. Army Criminal Investigative Division).

219 *Id.* at 163 (testimony of Special Agent Lisa Medrano, Chief, Special Victim Team, U.S. Army Criminal Investigative Division); *Transcript of PWG Preparatory Session* 384 (May 24, 2018) (testimony of Ms. Marta Sivert, Chief, Violent Crimes, U.S. Air Force Office of Special Investigations).

220 *Transcript of PWG Preparatory Session* 381 (May 24, 2018) (testimony of Mr. Guy Surian, Deputy Chief, Investigative Operations, Investigative Policy, and Criminal Intelligence, U.S. Army Criminal Investigative Division); *id.* at 382–83 (testimony of Mr. Kevin Poorman, Associate Director, Criminal Investigations, U.S. Air Force Office of Special Investigations).

221 *Id.* at 381 (testimony of Mr. Guy Surian, Deputy Chief, Investigative Operations, Investigative Policy, and Criminal Intelligence, U.S. Army Criminal Investigative Division).

222 "You Have Options Program," *information available at* <https://www.reportingoptions.org>.

223 *Id.*

224 *See Transcript of DAC-IPAD Public Meeting* 215 (Oct. 20, 2017) (testimony of Captain John Bushey, Commander, Naval Installations Command, Director of Public Safety, U.S. Navy); *id.* at 216 (testimony of Colonel Kevin Stewart, Executive Assistant to the Deputy Commandant, Installation and Logistics, U.S. Marine Corps); *Transcript of PWG Preparatory Session* 88 (May 24, 2018) (testimony of Ms. Charlotte Cluverius, Deputy Chief of Staff, Victims' Legal Counsel Program, U.S. Navy).

### C. Discussion

This issue, like that of expedited transfers with restricted reporting, centers on giving sexual assault victims more control over their cases—in this instance, over how their cases are reported and investigated.

The wishes of the victim to maintain his or her privacy must be balanced against the interests of command and society in pursuing a subject. If the MCIO knows the name of the subject or if the individual is readily identifiable and the case is not investigated, then some may hold the command and the MCIO accountable for future crimes committed by him or her. The need for good order and discipline in the military is acute, and failing to hold a perpetrator of sexual assault accountable by complying with the victim's request not to investigate may ultimately undermine good order and discipline. Thus, there appear to be good reasons to argue that MCIOs should investigate allegations of sexual assault when commands or MCIOs become aware of them.

However, similar concerns were raised when restricted reporting was being considered as an option for victims, and few problems have in fact developed. Today, restricted reporting is recognized as extremely beneficial to victims, without having caused a decline in good order and discipline or a noticeable increase in the number of serial rapists who evade detection.

Another area of concern is that a sexual offender who occupies a position of authority over the victim—such as a drill instructor or supervisor—might coerce or intimidate a victim into requesting that further investigation be restricted. Such cases should be exempt from this proposed policy.

Finally, such a policy might send a damaging message to a third party who reports a sexual assault, in an effort to do the right thing, and then sees that the allegation is not investigated. He or she might conclude that the offense is being swept under the rug—especially if the subject is someone in a position of authority, such as a drill instructor. Any study of instituting such a policy must therefore consider possible effects on third-party reporters in such instances.

### D. Findings and Recommendation

**Finding 30:** Under current DoD sexual assault policy, a victim's communication with another person (e.g., roommate, friend, family member) does not, in and of itself, prevent the victim from later electing to make a restricted report. However, if the person to whom the victim confided is in the victim's chain of command—whether an officer or a noncommissioned officer—or is DoD law enforcement, the allegation must be reported to the MCIO and is therefore treated as an unrestricted report, regardless of the victim's wishes or intent.

**Finding 31:** DoD policy further states that if information about a sexual assault comes to a commander's attention, even if from a source other than the victim, that commander must immediately report the matter to an MCIO and an official investigation based on that independently acquired information may be initiated.

**Finding 32:** DoD policy specifies that a victim's decision to decline to participate in an investigation should be honored; however, the victim cannot change a report from unrestricted to restricted, and the investigation may continue regardless of the victim's participation.

**Finding 33:** Several commanders indicated in their testimony to the DAC-IPAD that the one change they would make to the system is to allow victims who have lost the ability to make a restricted report—whether because of third-party reports or because they were unaware of this consequence of reporting to a member of their

chain of command—to restrict any further disclosure or investigation of the incident, if they so desire. Some representatives from the MCIOs testified in support of such a policy; others testified in opposition.

**Finding 34:** Additional information is needed in order to fully evaluate the effects of such a policy change. Issues that should be considered include the impact on the accused and the unit of closing an investigation, potential liability for future sexual misconduct by the accused, and the potential loss of evidence of the alleged offense.

**DAC-IPAD Recommendation 14:** The Secretary of Defense (in consultation with the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) establish a working group to review whether victims should have the option to request that further disclosure or investigation of a sexual assault report be restricted in situations in which the member has lost the ability to file a restricted report, whether because a third party has reported the sexual assault or because the member has disclosed the assault to a member of the chain of command or to military law enforcement. The working group's goal should be to find a feasible solution that would, in appropriate circumstances, allow the victim to request that the investigation be terminated. The working group should consider under what circumstances, such as in the interests of justice and safety, a case may merit further investigation regardless of the victim's wishes; it should also consider whether existing safeguards are sufficient to ensure that victims are not improperly pressured by the subject, or by others, to request that the investigation be terminated. This working group should consider developing such a policy with the following requirements:

- a. The victim be required to meet with an SVC or VLC before signing a statement requesting that the investigation be discontinued, so that the SVC or VLC can advise the victim of the potential consequences of closing the investigation.
- b. The investigative agent be required to obtain supervisory or MCIO headquarters-level approval to close a case in these circumstances.
- c. The MCIOs be aware of and take steps to mitigate a potential perception by third-party reporters that allegations are being ignored when they see that no investigation is taking place; such steps could include notifying the third-party reporter of the MCIO's decision to honor the victim's request.
- d. Cases in which the subject is in a position of authority over the victim be excluded from such a policy.
- e. If the MCIO terminates the investigation at the request of the victim, no adverse administrative or disciplinary action may be taken against the subject based solely on the reporting witness's allegation of sexual assault.

## VI. APPROVAL STANDARD AND PURPOSE OF THE EXPEDITED TRANSFER POLICY

### A. DAC-IPAD Interim Assessment

In its March 2018 annual report, the DAC-IPAD made the following interim assessment of this issue:

**DAC-IPAD Interim Assessment:** The DAC-IPAD believes the purpose, standards, and criteria outlined in the expedited transfer policy should be further evaluated and clarified. The PWG will continue to explore this issue.<sup>225</sup>

### B. Background and Testimony

A thorough discussion of DoD's expedited transfer policy is provided above in Section III, "Overview of the Expedited Transfer Policy."

In its March 2018 Report, the Committee concluded that the expedited transfer policy is working well and is achieving its mission of enabling sexual assault victims to leave environments where they may be subject to rumors, ostracism, or retaliation. The policy also enables victims to avoid contact with the subject and move closer to family or others who can support them. While not without problems, the expedited transfer policy has been lauded by many groups who have testified before the DAC-IPAD and PWG—commanders, SVCs and VLCs, SARCs, SAPR personnel, and, most importantly, the victims themselves. But various aspects of the policy have caused some confusion, particularly among commanders and others charged with administering it.

Commanders expressed frustration at having to decide whether an expedited transfer request is based on a credible report despite often having very little information. One told the Committee that it is difficult to determine if a report is credible without a full investigation, adding that commanders essentially must take the victim's allegation at face value in approving the request.<sup>226</sup> Given the requirement to render a decision within 72 hours and the presumption in favor of granting the request, commanders sometimes feel pressured to approve requests even when they believe they don't have all of the information necessary to meet the "credible report" standard. One special court-martial convening authority told the DAC-IPAD that though he "didn't fully agree to all" the expedited transfer requests he received, he felt "at risk" if he didn't approve them.<sup>227</sup>

Several presenters told the PWG that they have seen commanders grapple with their decision in cases in which little information was available. One VLC expressed the concern that in trying to ensure that the credible report standard is met, some commanders are requesting additional information from victims.<sup>228</sup> Such requests are problematic not only because a victim may be uneasy about providing additional details but also because commanders are prohibited from conducting independent investigations of sexual assault cases.<sup>229</sup> Ms. Diana Rangoussis, DoD SAPRO Senior Legislative and Policy Advisor, stated that when members of DoD SAPRO

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225 DAC-IPAD 2018 ANNUAL REPORT, *supra* note 4, at 72.

226 *Transcript of DAC-IPAD Public Meeting* 111 (Oct. 20, 2017) (testimony of Lieutenant Colonel Erin Miller, Assistant Chief of Staff, G4, Chief of Sustainment for 101st Airborne Division, Fort Campbell, KY, U.S. Army).

227 *Id.* at 193 (testimony of Colonel Erik Gilbert, Chief of Staff to the Director, Joint Future Force Development, Joint Staff, U.S. Army).

228 *Transcript of PWG Preparatory Session* 35 (May 24, 2018) (testimony of Ms. Charlotte Cluverius, Deputy Chief of Staff, Victims' Legal Counsel Program, U.S. Navy).

229 DoDI 6495.02, *supra* note 53, at encl. 2, ¶ 6.k(1).

drafted the policy, their aim was to balance the needs of the victim against the need to ensure the credibility of the program. To avoid the perception that any request would be automatically granted, they introduced the credible report standard; on the other hand, the presumption in favor of the victim suggested that absent a suspicion that the victim has filed a false report, the request should be granted.<sup>230</sup>

Several presenters supported extending the time allowed for making a decision (currently 72 hours), with some suggesting five days as a reasonable period.<sup>231</sup> In the view of one presenter, this change would ease the pressure on commanders and also help combat the misperception common among Service members that the policy is being abused.<sup>232</sup> The decision-making process would be, and would be perceived to be, more deliberative. In addition, increasing the time frame for the commander's decision would enable the commander and senior enlisted advisor to work with the assignments personnel to provide more comprehensive career counseling advice to victims.<sup>233</sup>

### C. Discussion

It is clear from the testimony of commanders, SARCs, and SVCs and VLCs that commanders want to do the right thing and what is in the best interests of the victims to help them heal. However, their attempts to satisfy a number of sometimes competing interests—ensuring that the credible report standard is satisfied, acting in the best interest of the victim, and making a decision very quickly—often lead to frustration. The decision on an expedited transfer can be especially difficult when the victim submitting the request has also declined to make a statement to the MCIO or participate in the investigation. It is clear from the statistics that most expedited transfer requests are approved—in fiscal years 2016 and 2017, the approval rate was 97%.<sup>234</sup>

More guidance should be given to commanders on the central question with which they grapple in deciding whether to approve an expedited transfer request: is the policy intended to operate in the best interests of the victim, the best interests of command, or both? The high approval rate indicates that commanders are largely basing their decisions on the best interests of the victim; this emphasis appears to be appropriate, given that the policy includes a presumption in favor of granting the victim's request.

The two stated intents of the expedited transfer policy are (1) to address situations in which a victim feels safe, but uncomfortable, and (2) to assist in the victim's recovery by moving him or her to a new location where

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230 *Transcript of PWG Preparatory Session 37–39* (May 24, 2018) (testimony of Ms. Diana Rangoussis, Senior Legislative and Policy Advisor, Sexual Assault Prevention and Response Office, U.S. Department of Defense).

231 *See id.* at 44–45 (testimony of Ms. Kimberly Lahm, Policy Branch Chief, Interpersonal Self-Directed Violence Response Program, U.S. Air Force); *id.* at 143 (testimony of Ms. Kathleen Schofield, Lead Sexual Assault Response Coordinator, Naval Air Station Whidbey Island, WA, U.S. Navy); *id.* at 144 (testimony of Ms. Deborah Allen, Operations Branch Chief, Sexual Assault Prevention and Response Office, Falls Church, VA, U.S. Air Force); *id.* at 148 (testimony of Sergeant First Class Lisa Vaughn, Lead Sexual Assault Response Coordinator, 1st Armored Division, Fort Bliss, TX, U.S. Army).

232 *See id.* at 44–45 (testimony of Ms. Kimberly Lahm, Policy Branch Chief, Interpersonal Self-Directed Violence Response Program, U.S. Air Force).

233 *See id.* at 19 (testimony of Mr. Paul Rosen, Director, Sexual Assault Prevention and Response Program, U.S. Navy); *id.* at 143 (testimony of Ms. Kathleen Schofield, Lead Sexual Assault Response Coordinator, Naval Air Station Whidbey Island, WA, U.S. Navy); *id.* at 144 (testimony of Ms. Deborah Allen, Operations Branch Chief, Sexual Assault Prevention and Response Office, Falls Church, VA, U.S. Air Force); *id.* at 148 (testimony of Sergeant First Class Lisa Vaughn, Lead Sexual Assault Response Coordinator, 1st Armored Division, Fort Bliss, TX, U.S. Army).

234 *See* Dep't of Def., Sexual Assault Prevention and Response Office, ANNUAL REPORT ON SEXUAL ASSAULT IN THE MILITARY: FISCAL YEAR 2016, Appendix B: STATISTICAL DATA ON SEXUAL ASSAULT 36 (May 1, 2017); Dep't of Def., Sexual Assault Prevention and Response Office, ANNUAL REPORT ON SEXUAL ASSAULT IN THE MILITARY: FISCAL YEAR 2017, Appendix B: STATISTICAL DATA ON SEXUAL ASSAULT 37 (Apr. 27, 2018) [hereinafter FY17 SAPRO REPORT]. Reports are available at <http://sapr.mil/reports>.

no one knows of the sexual assault. However, after speaking with numerous DoD and Service presenters, the Committee is certain that the policy's overarching purpose is to assist in the recovery of the victim—mentally, physically, and emotionally. Providing a clear purpose statement to that effect, followed by examples of such assistance—allowing the victim to move closer to family or other support structures; allowing the victim to get away from the subject, the scene of the sexual assault, and a situation in which he or she is subject to rumors, ostracism, or retaliation; and so on—would help clarify the policy.

If the policy is intended to operate in the best interests of the victim—which is in line with the purpose of assisting in the victim's recovery—perhaps the credible report standard should be discarded in favor of a standard more in keeping with that purpose. One suggestion supported by a number of presenters was that the signature of the victim on the DD Form 2910 making an allegation of sexual assault should satisfy the requirement of a credible report. Absent indications of a false allegation, the expedited transfer request would then be approved for any victim who formally reports a sexual assault in this manner. Another option would be to delete the requirement that a commander determine that a report be credible, adding instead to the criteria that commanders must consider in making a decision on an expedited transfer request “any evidence that the victim's report is not credible.” This option would support the current policy's presumption in favor of approving expedited transfer requests and would affirm a presumption in favor of the credibility of victims' reports (which is consistent with investigative results), yet would alert commanders of the need to consider any potential evidence to the contrary.

#### **D. Findings and Recommendations**

**Finding 35:** The stated purposes of the current DoD expedited transfer policy are (1) to address situations in which a victim feels safe, but uncomfortable, and (2) to assist in the victim's recovery by moving the victim to a new location where no one knows of the sexual assault. The expedited transfer policy does not address safety issues, which are the focus of other policies.

**Finding 36:** Many Service presenters testified that the primary purpose of the expedited transfer program is to assist victims in their recovery.

**Finding 37:** The standard that commanders must follow to reach a decision regarding an expedited transfer request is not clearly stated in DoD policy. According to DoD policy, a commander must find that a “credible report” has been made before approving an expedited transfer request, and the commander must consider a list of up to 10 additional criteria. However, DoD policy does not specify whether a commander should base his or her decision on what is in the best interests of the command, in the best interests of the victim, or both.

**Finding 38:** Determining whether an expedited transfer request is based on a “credible report” is often problematic for commanders because they only have 72 hours to make such a determination, are prohibited from conducting their own investigation, and frequently have little information to consider beyond the victim's report.

**DAC-IPAD Recommendation 15:** The Secretary of Defense (and the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) revise the DoD expedited transfer policy (and the policy governing the Coast Guard with respect to expedited transfers) to include the following points:

- a. The primary goal of the DoD expedited transfer policy is to act in the best interests of the victim. Commanders should focus on that goal when they make decisions regarding such requests.
- b. The single, overriding purpose of the expedited transfer policy is to assist in the victim's mental, physical, and emotional recovery from the trauma of sexual assault. This purpose statement should be followed by examples of reasons why a victim might request an expedited transfer and how such a transfer would assist in a victim's recovery (e.g., proximity to the subject or to the site of the assault at the current location, ostracism or retaliation at the current location, proximity to a support network of family or friends at the requested location, and the victim's desire for a fresh start following the assault).
- c. The requirement that a commander determine that a report be credible is not aligned with the core purpose of the expedited transfer policy. It should be eliminated, and instead an addition should be made to the criteria that commanders must consider in making a decision on an expedited transfer request: "any evidence that the victim's report is not credible."

**DAC-IPAD Recommendation 16:** Congress increase the amount of time allotted to a commander to process an expedited transfer request from 72 hours to no more than five workdays.

## VII. INCLUSION OF TEMPORARY, PERMANENT, INTRA- AND INTER-INSTALLATION TRANSFERS IN THE EXPEDITED TRANSFER POLICY

### A. DAC-IPAD Interim Assessment

In its March 2018 annual report, the DAC-IPAD made the following interim assessment of this issue:

**DAC-IPAD Interim Assessment:** The DAC-IPAD is concerned that Service members who initially receive an intra-installation expedited transfer may be penalized if the transfer does not resolve the problems in their situation and they subsequently request a second expedited transfer to leave the installation. The PWG will continue to explore this issue.<sup>235</sup>

### B. Background and Testimony

DoD policy allows a victim to request a temporary or permanent expedited transfer either within the same installation or command or to a different installation or command.<sup>236</sup> Several counsel described scenarios in which a victim requested a transfer within the installation but continued to run into the subject at various locations on base, making it necessary for the victim to then request another expedited transfer to a different

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<sup>235</sup> DAC-IPAD 2018 ANNUAL REPORT, *supra* note 4, at 73.

<sup>236</sup> DoDI 6495.02, *supra* note 53, at encl. 5, ¶ 6.b.

installation. Some counsel expressed concern that victims who request more than one expedited transfer may be viewed less favorably by supervisors and commanders and that multiple moves may harm a victim's career.<sup>237</sup>

However, subsequent testimony from Service presenters indicated that these damaging consequences rarely occurred. Presenters did not view as unusual or problematic a situation in which a victim requests a transfer first within the installation and later to a different installation because the first move had not resolved the victim's concerns. They explained that each request is evaluated on its own merits.<sup>238</sup>

### C. DAC-IPAD Final Assessment

Having spoken to numerous presenters from the Services and DoD—SVCs and VLCs, SARCs, SAPR personnel, assignments personnel, prosecutors, and defense counsel—the Committee has determined that with regard to this issue, the current expedited transfer policy is working for both victims and command.

## VIII. EXPANSION OF THE EXPEDITED TRANSFER POLICY TO CIVILIAN SPOUSES AND CHILDREN OF SERVICE MEMBERS

### A. DAC-IPAD Interim Assessment

In its March 2018 annual report, the DAC-IPAD made the following interim assessment of this issue:

**DAC-IPAD Interim Assessment:** The DAC-IPAD believes that the expedited transfer policy should be a complete program without gaps in eligibility within the military community, and thus should include family members. The PWG will continue to explore this issue.<sup>239</sup>

### B. Background and Testimony

By statute and DoD policy, expedited transfers are available only to active duty Service members who are victims of sexual assault.<sup>240</sup> However, it is sometimes the case that when a Service member's spouse or other family member is sexually assaulted by another military member, that Service member or his or her family member may face some of the same problems as would a Service member victim. For example, if a civilian spouse of an active duty Service member is sexually assaulted by another Service member at the same duty station, the victim's Service member spouse may also need a transfer to a new location so that the victim or Service member can avoid contact with the subject or ostracism or retaliation by others within the community. In addition,

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237 See *Transcript of PWG Preparatory Session* 190 (Dec. 1, 2017) (testimony of Captain Brandon K. Regan, Complex Trial Team, Legal Services Support Section—East, Camp Lejeune, NC, U.S. Marine Corps); *id.* at 191–92 (testimony of Major Jennifer Venghaus, Plans Officer, Personnel, Plans, and Training Office, Office of the Judge Advocate General, Washington, DC, U.S. Army).

238 *Transcript of PWG Preparatory Session* 105–06 (May 24, 2018) (testimony of Ms. Erinn Izykowski, Section Head, Plans, Policy, and Oversight, Sexual Assault Prevention and Response Program, U.S. Marine Corps); *id.* at 107 (testimony of Ms. Charlotte Cluverius, Deputy Chief of Staff, Victims' Legal Counsel Program, U.S. Navy); *id.* at 108 (testimony of Colonel James Key III, Chief, Special Victims' Counsel Program, U.S. Air Force); *id.* at 110 (testimony of Mr. Nathan Evans, Branch Chief, SHARP Program Management and Reporting, U.S. Army).

239 DAC-IPAD 2018 ANNUAL REPORT, *supra* note 4, at 74.

240 10 U.S.C. § 673; DoDI 6495.02, *supra* note 53, at encl. 5, ¶ 6.b.

family member victims of sexual assault, like Service member victims, may benefit from a support network available at a new duty station or location.

Several Service presenters informed the PWG that their Service policies address such situations through humanitarian or compassionate reassignments.<sup>241</sup>

### C. DAC-IPAD Final Assessment

Following the DAC-IPAD's initial review of this issue in its March 2018 Annual Report, Congress enacted a provision in the National Defense Authorization Act (NDAA) for Fiscal Year 2019 that expands the expedited transfer policy to include Service members whose dependents are victims of sexual assault by other Service members, thereby effectively resolving this issue. This section states:

The Secretary of Defense shall establish a policy to allow the transfer of a member of the Army, Navy, Air Force, or Marine Corps whose dependent is the victim of sexual assault perpetrated by a member of the Armed Forces who is not related to the victim.<sup>242</sup>

## IX. COLLECTION OF DATA REGARDING EXPEDITED TRANSFERS

### A. Previous DAC-IPAD Recommendation

In its March 2018 annual report, the DAC-IPAD made the following recommendation related to collecting data on expedited transfers:

**DAC-IPAD Recommendation 2:** The Secretary of Defense and the Secretary of Homeland Security identify and track appropriate metrics to monitor the expedited transfer policy and any abuses of it.<sup>243</sup>

### B. Background and Testimony

**Transfers of Victims.** Each fiscal year, in its annual report to Congress, DoD SAPRO publishes the number of intra-installation and inter-installation expedited transfer requests received, approved, and denied.<sup>244</sup>

On September 11, 2017, the DAC-IPAD Chair sent a written request for information to the Secretaries of the Military Departments, asking that they provide specific information on all sexual assault-related expedited transfer requests made by victims in fiscal year 2016—including those made pursuant to DoDI 6495.02 or any other policies, such as transfers made within the purview of FAP—so that the DAC-IPAD could assess the policy. Data were sought in response to 16 questions related to expedited transfers of victims and 13 questions

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241 *Transcript of PWG Preparatory Session* 115–16 (May 24, 2018) (testimony of Colonel James Key III, Chief, Special Victims' Counsel Program, U.S. Air Force); *id.* at 117 (testimony of Major Jessica Martz, Deputy Officer-in-Charge, Victims' Legal Counsel Program, U.S. Marine Corps); *id.* at 120 (testimony of Colonel Peter Yob, Special Victims' Counsel Program Manager, U.S. Army).

242 FY19 NDAA, *supra* note 5, § 536(b).

243 DAC-IPAD 2018 ANNUAL REPORT, *supra* note 4, at 68.

244 See Service Enclosures to DoD SAPRO ANNUAL REPORT: FISCAL YEAR 2017 (Apr. 27, 2018), *supra* note 234.

related to transfers of the accused.<sup>245</sup> The information that the DAC-IPAD received from the Services on expedited transfers for FY16 was not readily available or easily accessible to the Services and had to be compiled from various sources.

The DAC-IPAD summarized the data provided by the Services for all expedited transfer requests submitted in FY16 and compiled the results of key statistics in the charts at Appendix H. A total of 900 expedited transfer requests were submitted in FY16 across all of the Services; 29 of the requests were denied or withdrawn, yielding an approval rate of 97%.<sup>246</sup>

According to Service SVCs and VLCs, SARCs, and SAPR representatives who spoke to the PWG, once victims transfer to new locations, it is difficult to track them to determine if they have accessed services at the new location or separated from service, or to gauge how their career is progressing. The Navy and Coast Guard representatives said that they are currently in the process of analyzing those data.<sup>247</sup>

**Transfers of Subjects.** By statute and DoD policy, military commanders have the option of transferring the subject instead of the Service member who has requested an expedited transfer.<sup>248</sup> But neither DoD nor the Services are required to track or collect data on transfers of subjects under these provisions, and indeed they do not do so.<sup>249</sup> Service defense representatives were unable to provide information to the PWG regarding the number of subjects transferred under these provisions (whether the transfers were within the installation or to different installations) or the circumstances surrounding the transfers.<sup>250</sup>

### C. Discussion

In its March 2018 report, the DAC-IPAD found that the expedited transfer policy is an important tool for aiding the recovery of sexual assault victims and that it should be continued and improved upon.<sup>251</sup> The DAC-IPAD also sought to dispel the misperception among many Service members that the expedited transfer policy is being abused by Service members who wish to relocate to more favorable locations.

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245 See Appendix E, DAC-IPAD Request for Information Set 4, Questions 5 and 6 (Sept. 11, 2017).

246 See Appendix H, Aggregated Service Responses to DAC-IPAD Request for Information Set 4, Question 5, Attachment A, Table 1 (Sept. 11, 2017).

247 *Transcript of PWG Preparatory Session 18* (May 24, 2018) (testimony of Major Jessica Martz, Deputy Officer-in-Charge, Victims' Legal Counsel Organization, U.S. Marine Corps); *id.* at 18 (testimony of Lieutenant Amanda Styles, Central Assignment Coordinator, Aviation, Communication and Prevention Career Fields, U.S. Coast Guard); *id.* at 20 (testimony of Mr. Paul Rosen, Director, Sexual Assault Prevention and Response Program, U.S. Navy); *id.* at 131, 139 (testimony of Sergeant First Class Lisa Vaughn, Lead Sexual Assault Response Coordinator, 1st Armored Division, Fort Bliss, TX, U.S. Army); *id.* at 139–40 (testimony of Ms. Elizabeth Johnson, Command Sexual Assault Response Coordinator, 2nd Marine Logistics Group, Camp Lejeune, NC, U.S. Marine Corps); *id.* at 140 (testimony of Ms. Deborah Allen, Operations Branch Chief, Sexual Assault Prevention and Response Office, Falls Church, VA, U.S. Air Force).

248 10 U.S.C. § 674; DoDI 6495.02, *supra* note 53, at encl. 5, ¶ 6b(8)(b).

249 See Appendix H, Service Responses to DAC-IPAD Request for Information 4, Question 6 (Sept. 11, 2017).

250 *Transcript of PWG Preparatory Session 217* (May 24, 2018) (testimony of Lieutenant Colonel Mary Ann Bowery, Chief, Defense Counsel Assistance Program, U.S. Army); *id.* at 217 (testimony of Commander Chad Temple, Director, Defense Counsel Assistance Program, U.S. Navy); *id.* at 217 (testimony of Major Christopher Capasso, Officer-in-Charge, Defense Counsel Assistance Program, U.S. Marine Corps); *id.* at 218 (testimony of Colonel Thomas Rodrigues, Chief, Trial Defense Division, U.S. Air Force); *id.* at 218 (testimony of Commander Shanell King, Chief of Defense Services, U.S. Coast Guard).

251 DAC-IPAD 2018 ANNUAL REPORT, *supra* note 4, at 66.

During the Judicial Proceedings Panel Subcommittee installation site visits in 2016, numerous military personnel expressed their sense that the expedited transfer policy was widely abused by military members seeking to move to more desirable duty stations, such as Hawaii or California. But SVCs and VLCs, commanders, Service prosecutors, SARCs, and SAPR personnel testified that they have not encountered widespread abuse of the policy. To the contrary, data on the numbers of transfers and the locations from and to which victims are transferring reveal little abuse. For example, according to data collected by DoD SAPRO, in fiscal years 2016 and 2017, only about 20% of eligible victims requested expedited transfers, meaning that 80% remained in their units.<sup>252</sup>

The expedited transfer data provided by the Services show that by and large, victims are not requesting transfers to locations such as Hawaii or California; instead, the requests involve locations where transfers can be easily accommodated, such as Fort Hood, Texas.<sup>253</sup>

In addition, while Service prosecutors and SVCs/VLCs have anecdotally discussed whether a victim who receives an expedited transfer is more likely to cooperate with the investigation and prosecution of the case than a victim who does not receive a transfer, collecting offender disposition data for the two groups would provide more insight into this question. DoD does not currently compile these data.

The Services were inconsistent in their ability to produce information regarding transfers of Service members accused of sexual assault–related offenses. While the Marine Corps, Air Force, and Coast Guard provided the DAC-IPAD with information responding to most of the requested data points, the Army and Navy did not and reported that they are not able to centrally track this information,<sup>254</sup> even though commanders are required to consider transferring the accused offender rather than the victim.

The DAC-IPAD also believes it important for the Services to track information on career progression and retention rates for victims following an expedited transfer; these data should then be compared to corresponding data both for victims who do not receive expedited transfers and for Service members of the same grade who do not report having been victims of sexual assault. Because the Services invest considerable money and resources into recruits, they have a strong interest in determining the best way to protect their investment and retain their assets. In addition, mishandling these cases and the treatment of victims may lead those victims to leave the military and harm recruitment efforts by describing their experiences in the military in starkly negative terms.

To fully assess the effects and efficacy of the expedited transfer policy, and to help shape future policy, the DAC-IPAD believes it important to have access to more information related to sexual assault victims who receive expedited transfers and to accused who are transferred because of sexual assault allegations made against them.

#### **D. Findings and Recommendation**

**Finding 39:** Currently, DoD and the Services track and report the number of expedited transfer requests (within an installation and between installations) made by Service member victims and the number denied and approved, as specifically required by Congress.

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252 *Id.* at 59.

253 See Appendix H, Service Responses to DAC-IPAD Request for Information Set 4, Question 5 (Sept. 11, 2017).

254 See Appendix H, Service Responses to DAC-IPAD Request for Information Set 4, Question 6 (Sept. 11, 2017).

**Finding 40:** Currently, there is no consistent method of tracking other data related to victims who receive expedited transfers, such as career progression or retention in the military.

**Finding 41:** Currently, there is no requirement that DoD and the Services track or report the number of subject transfers made in accordance with DoDI 6495.02.

**DAC-IPAD Recommendation 17:** The Services track and report the following data in order to best evaluate the expedited transfer program:

- a. Data on the number of expedited transfer requests by **victims**; the grade and job title of the requester; the sex and race of the requester; the origin installation; whether the requester was represented by an SVC/VLC; the requested transfer locations; the actual transfer locations; whether the transfer was permanent or temporary; the grade and title of the decision maker and appeal authority, if applicable; the dates of the sexual assault report, transfer request, approval or disapproval decision and appeal decision, and transfer; and the disposition of the sexual assault case, if final.
- b. Data on the number of **accused** transferred; the grade and job title of the accused; the sex and race of the accused; the origin installation; the transfer installation; the grade and title of the decision maker; the dates of the sexual assault report and transfer; whether the transfer was permanent or temporary; and the disposition of the sexual assault case, if final.
- c. Data on victim participation in investigation/prosecution before and after an expedited transfer.
- d. Data on the marital status (and/or number of dependents) of victims of sexual assault who request expedited transfers and accused Service members who are transferred under this program.
- e. Data on the type of sexual assault offense (penetrative or contact) reported by victims requesting expedited transfers.
- f. Data on Service retention rates for sexual assault victims who receive expedited transfers compared with sexual assault victims who do not receive expedited transfers and with other Service members of similar rank and years of service.
- g. Data on the career progression for sexual assault victims who receive expedited transfers compared with sexual assault victims who do not receive expedited transfers and with other Service members of similar rank and years of service.
- h. Data on victim satisfaction with the expedited transfer program.
- i. Data on the expedited transfer request rate of Service members who make unrestricted reports of sexual assault.

## X. TRANSITIONAL ASSISTANCE TO FACILITATE RECOVERY FOR CERTAIN SERVICE MEMBERS AFTER A SEXUAL ASSAULT

### A. DAC-IPAD Interim Assessment

In its March 2018 annual report, the DAC-IPAD made the following interim assessment of this issue:

**DAC-IPAD Interim Assessment:** The DAC-IPAD believes that some active duty Service members who are sexually assaulted are in need of transitional assistance before they are able to successfully return to duty. The PWG will continue to explore this issue.<sup>255</sup>

### B. Background and Testimony

At the December 2017 PWG meeting, the mother of a medically retired Service member who was violently sexually assaulted by two Service members while in the Army provided powerful testimony describing her daughter's experience and the need for a period of transitional care for sexual assault victims who require it.<sup>256</sup> The DoD expedited transfer policy does not address such transitional care. Victims who testified at the December PWG meeting agreed that a program of transitional care would greatly benefit those sexual assault victims who need it.<sup>257</sup>

At the May 2018 PWG meeting, a Navy SARC stated that in a few cases, her command has arranged for Service members who are sexual assault victims to be attached to a Navy medical facility for 12 to 18 months to provide those individuals the time and resources to heal before returning to their career field.<sup>258</sup> Other presenters acknowledged that while many victims are able to heal and continue to perform their duties with or without an expedited transfer or mental health counseling, there may be some who need extra time to heal.<sup>259</sup> The presenters all agreed that if such a policy were instituted, transitional care should not be mandatory but rather should be available at the request of the victim.<sup>260</sup>

In addition to major military or civilian medical facilities that may be able to accommodate sexual assault victims who need more intensive treatment, the Air Force just announced the opening of its first Invisible Wounds Center at Eglin Air Force Base, Florida.<sup>261</sup> This facility will serve as a treatment center for military members who suffer from post-traumatic stress disorder, traumatic brain injury, and associated conditions.

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255 DAC-IPAD 2018 ANNUAL REPORT, *supra* note 4, at 73.

256 See *Transcript of PWG Preparatory Session* 305–22 (Dec. 1, 2017) (testimony of Ms. Amanda Hagy, DAC-IPAD Paralegal).

257 See *id.* at 330; *id.* at 342 (testimony of Ms. Amanda Hagy, DAC-IPAD Paralegal) (stating that having more substantial transition assistance when arriving at a new unit would be helpful).

258 *Transcript of PWG Preparatory Session* 168–69 (May 24, 2018) (testimony of Ms. Kathleen Schofield, Lead Sexual Assault Response Coordinator, Naval Air Station Whidbey Island, WA, U.S. Navy).

259 *Id.* at 177–78 (testimony of Ms. Bette Inch, Senior Victim Assistance Advisor, Sexual Assault Prevention and Response Office, U.S. Department of Defense); *id.* at 175 (testimony of Ms. Deborah Allen, Operations Branch Chief, Sexual Assault Prevention and Response Office, Falls Church, VA, U.S. Air Force); *id.* at 178–80 (testimony of Mx. Angela Lakey, National Capital Region Sexual Assault Response Coordinator, Washington, DC, U.S. Coast Guard).

260 *Id.*

261 Ilke Cole, *Air Force's First Invisible Wounds Center Opens*, DEFENSE VISUAL INFORMATION DISTRIBUTION SERVICE, Sept. 4, 2018, available at <https://www.dvidshub.net/news/291382/air-forces-first-invisible-wounds-center-opens>.

An Air Force SARC also mentioned a policy allowing an airman who has experienced a traumatic event, such as sexual assault, to request that there be a span of time—perhaps 90 days—in which he or she is not rated for purposes of a performance report.<sup>262</sup> This allows the individual time to recover and receive treatment during a period when he or she may not be performing at optimal level.

A 2016 report from the DoD Inspector General reveals that one-third of active duty sexual assault victims are separated from the military within one year of reporting a sexual assault.<sup>263</sup>

### C. Discussion

For many victims, the chance to start over at a new installation without having to fear running into the subject, combined with mental health counseling, is enough to enable them to move on with their lives and successfully continue their careers. But for other victims, the ongoing trauma from the assault may make an immediate return to work, even at a different location, too difficult. As some of the SVCs and VLCs and sexual assault victims told the PWG, many victims are reluctant to get the mental health care they need for fear that their supervisors and co-workers, who are likely unaware of the sexual assault, may disparage them for missing too much work.<sup>264</sup>

Allowing those victims who require it to attend a transitional care program away from their units—perhaps something similar to the Wounded Warrior programs for military members wounded in action—may enable them to return to full duty status as healthy, functioning members of their units.

### D. Findings and Recommendation

**Finding 42:** The expedited transfer policy and existing out-patient mental health, medical, and other resources that assist sexual assault victims in the recovery process are not sufficient for all sexual assault victims. Some victims may need extra time and resources to heal before resuming their regular duties.

**Finding 43:** Existing arrangements, such as military medical facility in-patient programs or Wounded Warrior programs, provide effective treatment to those victims who require it prior to returning to their regular duties. However, these resources are not being sufficiently utilized by the Services to treat those sexual assault victims who require additional mental health or medical treatment beyond the out-patient care that may be available at their local installation.

**DAC-IPAD Recommendation 18:** The Secretaries of the Military Departments (and the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) incorporate into policy, for those sexual assault victims who request it, an option to attend a transitional care program at a military medical facility, Wounded Warrior center, or other facility in order to allow those victims sufficient time and resources to heal from the trauma of sexual assault.

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262 *Transcript of PWG Preparatory Session 170–71* (May 24, 2018) (testimony of Ms. Lisa Surette, Training Branch Chief, Sexual Assault Prevention and Response Office, Falls Church, VA, U.S. Air Force).

263 DEPARTMENT OF DEFENSE INSPECTOR GENERAL REPORT ON EVALUATION OF THE SEPARATION OF SERVICE MEMBERS WHO MADE A REPORT OF SEXUAL ASSAULT, Report No. DODIG 2016-088 (May 9, 2016).

264 *See Transcript of PWG Preparatory Session 330* (Dec. 1, 2017).

## **XI. EXPEDITED TRANSFER IN THE NATIONAL GUARD AND THE RESERVE COMPONENTS AND AT THE SERVICE ACADEMIES**

The PWG received information regarding expedited transfers in the Reserve components and in the Service academies.

Representatives from the National Guard Bureau informed the PWG that expedited transfers in the Guard are generally handled through changes in drilling locations and times within a Guard unit, but noted that the Guard has the ability to transfer a victim to another Guard or Reserve unit, if necessary.<sup>265</sup> Similar procedures are in place for other reservists.<sup>266</sup>

With regard to the Service academies, Service SAPR representatives said that these requests are generally handled by allowing the victim a leave of absence or allowing the cadet to switch companies/squadrons within the Service academy, issuing military protective orders, ensuring that the victim does not have classes with the subject, and so on.<sup>267</sup> In addition, they reported not having received any requests by victims at the Service academies to transfer from one academy to another.<sup>268</sup>

## **XII. CONCLUSION**

It is clear to the Committee that the DoD expedited transfer policy has greatly helped victims. Now that the policy is several years old and has become widely accepted by commanders and others charged with administering it, it is time for DoD SAPRO to review the policy and make appropriate changes to its language and its scope, as well as to the collection of data used to evaluate the program. Expanding the policy to include Service members who file restricted reports of sexual assault as well as to Service members whose dependents have been sexually assaulted by another military member may be two ways to allow more Service members access to the program's benefits.

The Committee also believes that it is important to collect relevant data on transfers of victims and subjects, which could help DoD and the Services in changing existing policies in this area or drafting new ones. Tracking data on victim retention rates and career progression may be especially useful as DoD seeks to determine how best to retain quality Service members following the trauma of a sexual assault.

Finally, the Committee believes that victims can be given the option of requesting that a sexual assault not be further disclosed or investigated after it has been reported by a third party or inadvertently disclosed by the victim to a mandatory reporter. It is important, however, that a victim's wish for privacy be appropriately balanced against the military community's need to hold offenders accountable.

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265 See *Transcript of PWG Preparatory Session 51–52* (May 24, 2018) (testimony of Lieutenant Colonel Tyler Buckley, Program Manager, Special Victims' Counsel Program for the National Guard) (discussing Chief National Guard Bureau Instruction 1303.01A, EXPEDITED TRANSFER, REASSIGNMENT, OR REMOVAL OF NATIONAL GUARD MEMBERS DUE TO AN UNRESTRICTED REPORT OF SEXUAL ASSAULT (Aug. 6, 2014)).

266 DoDI 6495.02, *supra* note 53, at encl. 5, ¶ 6.b(13).

267 See *Transcript of PWG Preparatory Session 98* (May 24, 2018) (testimony of Ms. Christa Specht, Chief, Member Advocacy Division, U.S. Coast Guard); *id.* at 99–100 (testimony of Ms. Charlotte Cluverius, Deputy Chief of Staff, Victims' Legal Counsel Program, U.S. Navy); *id.* at 101 (testimony of Colonel Peter Yob, Special Victims' Counsel Program Manager, U.S. Army); *id.* at 102 (testimony of Ms. Kimberly Lahm, Policy Branch Chief, Interpersonal Self-Directed Violence Response Program, U.S. Air Force).

268 See *id.* at 98–99 (testimony of Ms. Charlotte Cluverius, Deputy Chief of Staff, Victims' Legal Counsel Program, U.S. Navy); *id.* at 102 (testimony of Ms. Kimberly Lahm, Policy Branch Chief, Interpersonal Self-Directed Violence Response Program, U.S. Air Force).



## CHAPTER 5.

# DISCUSSION OF REQUIRED STUDY ON COLLATERAL MISCONDUCT

### I. INTRODUCTION

In the National Defense Authorization Act for Fiscal Year 2019, Congress included a provision requiring the Secretary of Defense, “acting through the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces,” to prepare and submit biennial reports to Congress detailing the number of instances in which an individual who reports an incident of sexual assault is either investigated for or receives adverse action as a result of misconduct engaged in by that individual that is collateral to the investigation of the sexual offense.<sup>269</sup>

As of the date of this report, the DAC-IPAD has not received guidance or direction from the Secretary of Defense or the Department of Defense Office of the General Counsel regarding the obligations of the Committee with respect to this provision. In the absence of such guidance and mindful that the first report is due on September 30, 2019, the Committee discussed at its October 19, 2018, public meeting the requirements for the study and how the DAC-IPAD should proceed with respect to the study.

### II. INITIAL OBSERVATIONS

The Committee made four initial observations regarding the study. The first is that tracking and reporting on all instances of collateral misconduct for the two years preceding the study will require additional staffing and resources if it is to be undertaken by the DAC-IPAD. The Committee’s ongoing review of more than 2,000 investigative case files closed in fiscal year 2017, along with its analysis and assessment of the Judicial Proceedings Panel recommendations referred to the DAC-IPAD in June 2018 by the DoD General Counsel, will fully consume the existing staff and resources over the next year.

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<sup>269</sup> FY19 NDAA, *supra* note 5, § 547. This section, titled “Report on Victims of Sexual Assault in Reports of Military Criminal Investigative Organizations,” states:

- (a) REPORT.—Not later than September 30, 2019, and not less frequently than once every two years thereafter, the Secretary of Defense, acting through the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces shall submit to the congressional defense committees a report that includes, with respect to the period of two years preceding the date of the submittal of the report, the following:
  - (1) The number of instances in which a covered individual was accused of misconduct or crimes considered collateral to the investigation of a sexual assault committed against the individual.
  - (2) The number of instances in which adverse action was taken against a covered individual who was accused of collateral misconduct or crimes as described in paragraph (1).
  - (3) The percentage of investigations of sexual assaults that involved an accusation or adverse action against a covered individual as described in paragraphs (1) and (2).
- (b) COVERED INDIVIDUAL DEFINED.—In this section, the term “covered individual” means an individual who is identified as a victim of a sexual assault in the case files of a military criminal investigative organization.

The second observation of the Committee is that if performed by the DAC-IPAD, the study will require the Committee members and staff to be granted access to a substantial amount of sensitive personnel and legal records to identify instances of misconduct that may be connected to sexual assault allegations and military criminal investigative organization (MCIO) investigations. Third, the Committee noted that the due date of September 2019 for submission of the initial report to Congress will be challenging to meet in the absence of clear guidance from DoD on whether and how it will provide the DAC-IPAD with the necessary resources and access to records. Finally, the Committee observed that the requirement that it submit collateral misconduct reports to Congress every two years following the initial report's due date of September 2019 will likely not be possible, since the DAC-IPAD will statutorily terminate by May 2021 if not renewed by the Secretary of Defense.

### III. DAC-IPAD INPUT FOR THE COLLATERAL MISCONDUCT STUDY

While uncertain as of the date of this report whether the DAC-IPAD will have the resources or access to documents needed to conduct the initial study itself, the members determined at the October 19, 2018, public meeting that they could make a first contribution by offering input regarding the appropriate parameters for the study.

The Committee members agreed that the first step should be to define the study's terms and limits. The members noted that only one term, "covered individual," is defined in the provision itself. The term "collateral misconduct," while not defined in the legislation, is defined in DoD Instruction 6495.02 ("Sexual Assault Prevention and Response (SAPR) Program Procedures") as follows: "victim misconduct that might be in time, place, or circumstance associated with the victim's sexual assault incident."<sup>270</sup> The examples of collateral misconduct provided by the DoD instruction include underage drinking or other related alcohol offenses, adultery, fraternization, and other violations of certain regulations or orders.

The Committee members discussed focusing the study on active duty Service members who have made an unrestricted report of sexual assault against another active duty Service member in order to clearly define a baseline population whose military justice and personnel records will be identifiable. The *Department of Defense Annual Report on Sexual Assault in the Military for Fiscal Year 2017* indicates that a study of these cases would require reviewing records pertaining to at least 2,486 unrestricted reports involving a sexual assault allegation by a Service member against a Service member.<sup>271</sup>

Members of the DAC-IPAD's Case Review Working Group noted that the working group is currently collecting information on collateral misconduct, such as underage drinking or adultery, from the investigative case files they review, drawing on witness statements in the files; however, they also noted that the data collected are limited, because the working group is reviewing only penetrative sexual assault investigations. To the extent that they are determined to be meaningful, the Committee will report these data once the case reviews are complete.

The Committee concluded that the DAC-IPAD staff should coordinate with the Services on how best to identify and report on collateral misconduct and that it should wait for further guidance from DoD regarding the Department's interpretation of the NDAA provision and the DAC-IPAD's role in the study.

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<sup>270</sup> DoDI 6495.02, *supra* note 53, at Glossary.

<sup>271</sup> FY17 SAPRO REPORT, *supra* note 234, at Appendix B: STATISTICAL DATA ON SEXUAL ASSAULT 11. Because DoD's published data do not include unrestricted reports of sexual assault involving spouses and intimate partners covered by DoD's Family Advocacy Program, the DAC-IPAD would likely have to review more than 2,486 records. *Id.* at 4.

## CHAPTER 6.

# ADDITIONAL ISSUES FOR THE DAC-IPAD'S REVIEW IDENTIFIED BY THE JUDICIAL PROCEEDINGS PANEL

### I. INTRODUCTION

On June 7, 2018, the Acting General Counsel for the Department of Defense requested that the Committee review and analyze in its next annual report five recommendations made to the DAC-IPAD and the Secretary of Defense by its predecessor, the Judicial Proceedings Panel.<sup>272</sup> They were among the recommendations made by the JPP in two separate reports issued in September 2017, the *JPP Report on Panel Concerns Regarding the Fair Administration of Military Justice in Sexual Assault Cases* and the *JPP Report on Statistical Data Regarding Military Adjudication of Sexual Assault Offenses for Fiscal Year 2015*.<sup>273</sup> In these reports, the JPP concluded that the combination of a less robust Article 32 pretrial hearing resulting from a significant statutory revision, perceived pressure on convening authorities to refer sexual assault charges to court-martial, and reliance on a low prosecution standard, probable cause, for referring cases to court-martial has led to sexual assault cases being prosecuted in which there is little chance for a conviction.<sup>274</sup> The Panel further noted that the low conviction rate for sexual assault offenses prosecuted in the military (36%) and the proportion of sexual assault trials that result in full acquittals (43%) merit continued study.<sup>275</sup> These data reinforce the concerns that military practitioners consistently brought to the attention of the JPP and the JPP Subcommittee, and are consistent with the JPP's independent assessment of the military justice system.

The Committee has reviewed the recommendations and begun examining the substantive issues addressed in each. JPP Recommendations 54 and 60, regarding the analysis of court-martial data, have been incorporated by the DAC-IPAD into its ongoing review of sexual assault cases prosecuted in the military and are addressed in Chapter 2 of this report.<sup>276</sup> JPP Recommendations 55, 57, and 58, discussed in this chapter, concern the way in

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272 See Appendix M, Letter from Mr. William Castle, Acting General Counsel for the Department of Defense, to Ms. Martha Bashford, DAC-IPAD Chair (June 7, 2018).

273 During its three-year tenure, which concluded in September 2017, the JPP issued a total of 11 reports and 63 recommendations to the Secretary of Defense and Congress. As of this writing, DoD has not issued a formal response to many of these recommendations.

274 JPP REPORT ON FAIR ADMINISTRATION OF MILITARY JUSTICE, *supra* note 167, at 23.

275 JPP REPORT ON FY15 STATISTICAL DATA, *supra* note 167, at 6. The JPP analyzed the likelihood that an individual would be convicted of a penetrative sexual assault offense by reviewing official court-martial documents for trials completed in fiscal year 2015.

276 See *supra* Chapter 2.

JPP Recommendation 54. The successor federal advisory committee to the JPP, the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces, should consider continuing to analyze adult-victim sexual assault court-martial data on an annual basis as the JPP has done, and should consider analyzing the following patterns that the JPP discovered in its analysis of fiscal year 2015 court-martial data:

- a. Cases involving military victims tend to have less punitive outcomes than cases involving civilian victims; and
- b. The conviction and acquittal rates for sexual assault offenses vary significantly among the Services.
- c. If a Service member is charged with a sexual assault offense, and pleads not guilty, the probability that he or she will be convicted of a sexual assault offense is 36%, and the probability that he or she will be convicted of any offense (i.e., either a sex or a non-sex offense) is 59%.<sup>27</sup>

which sexual assault cases are selected for prosecution in accordance with Articles 32, 33, and 34 of the Uniform Code of Military Justice.<sup>277</sup> Among the many considerations pertinent to the Committee's tasks are the historical evolution of these articles and their implementing rules, as well as the significant changes to military law and policy passed as part of the National Defense Authorization Act for Fiscal Year 2017, known collectively as the Military Justice Act of 2016.<sup>278</sup> These changes, which went into effect on January 1, 2019, will greatly influence how the Committee assesses the policies and concerns highlighted by the JPP. Therefore, the Committee will further evaluate these issues in future reports.

## II. JPP RECOMMENDATION 55 REGARDING THE EFFECTIVENESS OF ARTICLE 32, UCMJ, AND THE IMPORTANCE OF HAVING INDEPENDENT DEFENSE INVESTIGATORS

JPP Recommendation 55 calls for an evaluation of the effectiveness of preliminary hearings conducted pursuant to Article 32, UCMJ.

**JPP Recommendation 55:** The Secretary of Defense and the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) continue the review of the new Article 32 preliminary hearing process, which, in the view of many counsel interviewed during military installation site visits and according to information presented to the JPP, no longer serves a useful discovery purpose. This review should look at whether preliminary hearing officers in sexual assault cases should be military judges or other senior judge advocates with military justice experience and whether a recommendation of such a preliminary hearing officer against referral, based on lack of probable cause, should be given more weight by the convening authority. This review should evaluate data on how often the recommendations of preliminary hearing officers regarding case disposition are followed by convening authorities and determine whether further analysis of, or changes to, the process are required.

In addition, because the Article 32 hearing no longer serves as a discovery mechanism for the defense, the JPP reiterates its recommendation—presented in its report on military defense counsel resources and experience in sexual assault cases—that the Services provide the defense with independent investigators.

This provision requires an independent inquiry into preferred charges before a convening authority may refer the charges to trial by a general court-martial. It also requires that an impartial preliminary hearing officer (PHO), who is typically a judge advocate, conduct a hearing focusing on the following issues:

- Whether each specification alleges an offense

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Recommendation 60 states,

The Secretary of Defense and the DAC-IPAD continue to gather data and other evidence on disposition decisions and conviction rates of sexual assault courts-martial to supplement information provided to the JPP Subcommittee during military installation site visits and to determine future recommendations for improvements to the military justice system.

<sup>277</sup> 10 U.S.C. §§ 832–34 (2019) (UCMJ, Art. 32, 33, 34).

<sup>278</sup> FY17 NDAA, *supra* note 160.

- Whether there is probable cause to believe that the accused committed the offense(s)
- Whether there is jurisdiction over the accused and over the offense
- The disposition that should be made of the case

The preliminary hearing officer's determinations are advisory, as is his or her recommendation as to the appropriate disposition of the charges. A defendant may waive his or her right to an Article 32 preliminary hearing. The staff judge advocate communicates the Article 32 preliminary hearing officer's findings and recommendations to the convening authority, along with his or her own advice regarding referral of charges to court-martial.

In the National Defense Authorization Act for Fiscal Year 2014 (FY14 NDAA), Congress changed Article 32 proceedings from an investigation into the "truth and form" of the charges, and one that served as a discovery tool for the accused, to a more narrowly drawn preliminary hearing focused on an initial probable cause determination and on the disposition that should be made of the case.<sup>279</sup> Congress also eliminated the hearing officer's ability to compel a military member who is a sexual assault victim to testify at the Article 32 preliminary hearing.<sup>280</sup> However, the revised Article 32 proceedings allow a preliminary hearing officer to consider other forms of evidence, such as written or recorded statements made by the victim to law enforcement.<sup>281</sup> These changes went into effect for Article 32 preliminary hearings conducted on or after December 27, 2014.

The Military Justice Act of 2016, which applies to Article 32 preliminary hearings conducted after January 1, 2019, further amended Article 32, UCMJ, in three respects: (1) it better aligns Article 32 procedures with the standards and terminology used in the staff judge advocate's written advice to convening authorities and in the standards for referral of charges to court-martial; (2) it allows a defendant after the hearing to submit to the PHO written matters that bear on the PHO's recommendation as to the disposition that should be made of the case; and (3) it calls for the PHO to provide a more robust written analysis of the charges and the underlying evidence than previously required.

The Committee plans to consider the overarching issues identified by the JPP—Article 32's effectiveness in ensuring that the convening authority is fully aware of the strengths and weaknesses of a case, and in ensuring fairness to the accused<sup>282</sup>—once it examines the full measure of recent changes to the law that were implemented in January 2019. A thorough analysis of Article 32, UCMJ, will consider whether an investigative subpoena power could potentially make more evidence available at a preliminary hearing, and whether other procedural reforms broaden the government's discovery obligations and promote early disclosure of information to the defense.<sup>283</sup> Finally, as discussed in the section that follows, nonbinding disposition guidance for judge advocates and commanders developed pursuant to Article 33, UCMJ, may also affect Article 32 proceedings.<sup>284</sup> Therefore, the Committee plans to allow time for these numerous changes in law and policy to take effect before analyzing this issue.

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279 FY14 NDAA, *supra* note 45, § 1702.

280 *Id.*

281 2019 MCM, *supra* note 131, R.C.M. 405.

282 JPP REPORT ON FAIR ADMINISTRATION OF MILITARY JUSTICE, *supra* note 167, at 23.

283 See FY19 NDAA, *supra* note 5, § 5202 (UCMJ, Art. 30a); 2019 MCM, *supra* note 131, R.C.M. 701.

284 FY19 NDAA *supra* note 5, § 5204.

JPP Recommendation 55 also calls for the Services to employ full-time, independent defense investigators. These investigators are distinct and independent from the MCIOs, and are specifically trained to develop and discover evidence and witnesses in support of the defense case and to explore crucial extenuation and mitigation evidence invaluable during sentencing.<sup>285</sup> According to the JPP's analysis, there is an ever-greater need for the resources and skills of defense investigators because some well-intended reforms to the UCMJ may inadvertently have unfairly curtailed an accused's ability to discover information about his or her case.

In June 2018 DoD issued a report concerning the resourcing of trial defense service organizations within each of the Services.<sup>286</sup> In that report, the Services (with the exception of the Marine Corps) announced their decision to provide their respective defense service organizations with full-time defense investigators. As the report notes, the Navy has employed independent defense investigators since 2016, and considers this to be a best practice that has resulted in numerous successes on behalf of Navy clients.<sup>287</sup> The DAC-IPAD endorses the JPP's recommendation that the Services employ defense investigators and applauds the Services on the progress they have made in implementing this reform. The DAC-IPAD will monitor the extent to which defense investigators increasingly become available to military defense counsel and comment on these initiatives in future reports.

### III. JPP RECOMMENDATIONS 57 AND 58 REGARDING THE INFORMATION AND LEGAL ADVICE PROVIDED TO CONVENING AUTHORITIES IN SEXUAL ASSAULT CASES

JPP Recommendations 57 and 58, both forwarded for the DAC-IPAD's review and analysis, relate closely to the process by which cases are selected for prosecution in the military:

**JPP Recommendation 57:** After case disposition guidance under Article 33, UCMJ, is promulgated, the Secretary of Defense and DAC-IPAD conduct both military installation site visits and further research to determine whether convening authorities and staff judge advocates are making effective use of this guidance in deciding case dispositions. They should also determine what effect, if any, this guidance has had on the number of sexual assault cases being referred to courts-martial and on the acquittal rate in such cases.

**JPP Recommendation 58:** The Secretary of Defense and the DAC-IPAD review whether Article 34 of the UCMJ and Rule for Court-Martial 406 should be amended to remove the requirement that the staff judge advocate's pretrial advice to the convening authority (except for exculpatory information contained in that advice) be released to the defense upon referral of charges to court-martial. This review should determine whether any memo from trial counsel that is appended should also be shielded from disclosure to the defense. This review should also consider whether such a change would encourage the staff judge advocate to provide more fully developed and candid written advice to

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285 Department of Defense, REPORT ON REVIEW OF RESOURCING OF TRIAL DEFENSE SERVICES ORGANIZATIONS 6 (June 2018), available at [https://dacipad.whs.mil/images/Public/10-Reading\\_Room/02\\_DACIPAD\\_Mtg\\_Materials/DACIPAD\\_Meeting\\_Materials\\_20181019\\_Final.pdf](https://dacipad.whs.mil/images/Public/10-Reading_Room/02_DACIPAD_Mtg_Materials/DACIPAD_Meeting_Materials_20181019_Final.pdf).

286 *Id.*

287 *Id.* at 5.

the convening authority regarding the strengths and weaknesses of the charges so that the convening authority can make a better-informed disposition decision.<sup>288</sup>

These recommendations call for an analysis and assessment of the implementation of Articles 33 and 34, UCMJ, as amended by the Military Justice Act of 2016. Article 33, UCMJ, provides that

The President shall direct the Secretary of Defense to issue . . . non-binding guidance regarding factors that commanders, convening authorities, staff judge advocates, and judge advocates should take into account when exercising their duties with respect to disposition of charges and specifications in the interest of justice and discipline under sections 830 and 834 of this title (articles 30 and 34). Such guidance shall take into account, with appropriate consideration of military requirements, the principles contained in official guidance of the Attorney General to attorneys for the Government with respect to disposition of Federal criminal cases in accordance with the principle of fair and evenhanded administration of Federal criminal law.<sup>289</sup>

In January 2019, the Secretary of Defense issued the nonbinding disposition guidance implementing Article 33, UCMJ, that is the focus of JPP Recommendation 57. The guidance affirms the evidentiary standard of probable cause to convene a court-martial and sets out several considerations for disposing of sexual assault and all other cases “in the interests of justice and good order and discipline.”<sup>290</sup> Among those considerations is whether the admissible evidence will likely be sufficient to obtain and sustain a conviction in a trial by court-martial, a factor not listed in previous disposition guidance.<sup>291</sup>

Article 34 of the UCMJ states that following an Article 32 preliminary hearing, a convening authority must obtain the advice of his or her staff judge advocate prior to referring charges to a general court-martial.<sup>292</sup> The staff judge advocate must advise him or her in writing that the specification alleges an offense under the UCMJ, that there is probable cause to believe the accused committed the offense, and that a court-martial would have jurisdiction over the offense and the accused.<sup>293</sup> In addition, the staff judge advocate must make a recommendation as to the appropriate disposition of the charges.<sup>294</sup> According to Article 33, beginning January 1, 2019, the staff judge advocate should consider the nonbinding disposition guidance when making a disposition recommendation. If the convening authority refers the charges to trial by court-martial, the Article 34 pretrial advice must be provided to defense counsel.<sup>295</sup>

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288 JPP REPORT ON THE FAIR ADMINISTRATION OF MILITARY JUSTICE, *supra* note 167.

289 10 U.S.C. § 833 (2019) (UCMJ, Art. 33).

290 See DoD Joint Service Committee website, <https://jsc.defense.gov/Military-Law/Current-Publications-and-Updates/>. The disposition guidance applies to other decision points in the military justice process—for example, the initial disposition decision and the decision whether to enter into a plea agreement—not discussed here.

291 *Id.* See also MANUAL FOR COURTS-MARTIAL, UNITED STATES (2016 ed.), Discussion to R.C.M. 306(b) and (e).

292 10 U.S.C. § 834 (2019) (UCMJ, Art. 34).

293 *Id.*

294 *Id.*

295 2019 MCM, *supra* note 131, R.C.M. 701.

The Committee will examine in future reports the effectiveness of the mechanisms used to convey information and advice to convening authorities concerning sexual assault cases, focusing specifically on the issues highlighted by the JPP's recommendations. As in its assessment of Article 32, UCMJ, the DAC-IPAD should consider the full spectrum of changes to the court-martial process before commenting on the implementation of Articles 33 and 34.

The JPP also recommends visiting military installations in order to have candid discussions with practitioners regarding specific areas of their practice. This method of gathering information would benefit the Committee's analysis of both Article 33 and Article 34. In addition, site visits would be helpful in ensuring that the Committee understands the combined effect of Congress's changes to the UCMJ, while also enabling members to home in on the JPP's specific policy recommendations. However, the Committee plans to visit military installations only after enough time has elapsed to allow for full implementation of the relevant statutory changes, and after the Committee studies further the policies designed to assist convening authorities in exercising their prosecutorial discretion. Therefore, the DAC-IPAD will examine and comment in future reports on the court-martial referral process as reflected in Articles 33 and 34 and their implementing rules.

## APPENDIX A.

# DAC-IPAD AUTHORIZING STATUTES AND AMENDMENTS

### NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2015

#### **SECTION 546. DEFENSE ADVISORY COMMITTEE ON INVESTIGATION, PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN THE ARMED FORCES. (Public Law 113–291; 128 Stat. 3374; 10 U.S.C. 1561 note)**

(a) ESTABLISHMENT REQUIRED.—

(1) IN GENERAL.—The Secretary of Defense shall establish and maintain within the Department of Defense an advisory committee to be known as the “Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces” (in this section referred to as the “Advisory Committee”).

(2) DEADLINE FOR ESTABLISHMENT.—The Secretary shall establish the Advisory Committee not later than 30 days before the termination date of the independent panel established by the Secretary under section 576(a)(2) of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112-239; 126 Stat. 1758), known as the “judicial proceedings panel”.

(b) MEMBERSHIP.—The Advisory Committee shall consist of not more than 20 members, to be appointed by the Secretary of Defense, who have experience with the investigation, prosecution, and defense of allegations of sexual assault offenses. Members of the Advisory Committee may include Federal and State prosecutors, judges, law professors, and private attorneys. Members of the Armed Forces serving on active duty may not serve as a member of the Advisory Committee.

(c) DUTIES.—

(1) IN GENERAL.—The Advisory Committee shall advise the Secretary of Defense on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces.

(2) BASIS FOR PROVISION OF ADVICE.—For purposes of providing advice to the Secretary pursuant to this subsection, the Advisory Committee shall review, on an ongoing basis, cases involving allegations of sexual misconduct described in paragraph (1).

(d) ANNUAL REPORTS.—Not later than March 30 each year, the Advisory Committee shall submit to the Secretary of Defense and the Committees on Armed Services of the Senate and the House of Representatives a report describing the results of the activities of the Advisory Committee pursuant to this section during the preceding year.

(e) TERMINATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Advisory Committee shall terminate on the date that is five years after the date of the establishment of the Advisory Committee pursuant to subsection (a).

(2) CONTINUATION.—The Secretary of Defense may continue the Advisory Committee after the termination date applicable under paragraph (1) if the Secretary determines that continuation of the Advisory Committee after that date is advisable and appropriate. If the Secretary determines to continue the Advisory Committee after that date, the Secretary shall submit to the President and the congressional committees specified in subsection (d) a report describing the reasons for that determination and specifying the new termination date for the Advisory Committee.

(f) DUE DATE FOR ANNUAL REPORT OF JUDICIAL PROCEEDINGS PANEL.—Section 576(c)(2)(B) of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112-239; 126 Stat. 1760) is amended by inserting “annually thereafter” after “reports”.

**NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2016**

**SECTION 537. MODIFICATION OF DEADLINE FOR ESTABLISHMENT OF DEFENSE ADVISORY COMMITTEE ON INVESTIGATION, PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN THE ARMED FORCES.**

Section 546(a)(2) of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291; 128 Stat. 3374; 10 U.S.C. 1561 note) is amended by striking “not later than” and all that follows and inserting “not later than 90 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2016.”

**NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2019****SEC. 533. AUTHORITIES OF DEFENSE ADVISORY COMMITTEE ON INVESTIGATION, PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN THE ARMED FORCES.**

Section 546 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (10 U.S.C. 1561 note) is amended—

(1) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively; and

(2) by inserting after subsection (c) the following new subsection (d):

“(d) AUTHORITIES.—

“(1) HEARINGS.—The Advisory Committee may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the committee considers appropriate to carry out its duties under this section.

“(2) INFORMATION FROM FEDERAL AGENCIES.—Upon request by the chair of the Advisory Committee, a department or agency of the Federal Government shall provide information that the Advisory Committee considers necessary to carry out its duties under this section. In carrying out this paragraph, the department or agency shall take steps to prevent the unauthorized disclosure of personally identifiable information.”

**SEC. 547. REPORT ON VICTIMS OF SEXUAL ASSAULT IN REPORTS OF MILITARY CRIMINAL INVESTIGATIVE ORGANIZATIONS.**

(a) REPORT.—Not later than September 30, 2019, and not less frequently than once every two years thereafter, the Secretary of Defense, acting through the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces shall submit to the congressional defense committees a report that includes, with respect to the period of two years preceding the date of the submittal of the report, the following:

(1) The number of instances in which a covered individual was accused of misconduct or crimes considered collateral to the investigation of a sexual assault committed against the individual.

(2) The number of instances in which adverse action was taken against a covered individual who was accused of collateral misconduct or crimes as described in paragraph (1).

(3) The percentage of investigations of sexual assaults that involved an accusation or adverse action against a covered individual as described in paragraphs (1) and (2).

(b) COVERED INDIVIDUAL DEFINED.—In this section, the term “covered individual” means an individual who is identified as a victim of a sexual assault in the case files of a military criminal investigative organization.



## APPENDIX B. COMMITTEE CHARTER

### Charter

#### Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces

1. Committee's Official Designation: The Committee will be known as the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces ("the Committee").
2. Authority: The Secretary of Defense, pursuant to section 546 of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 ("FY 2015 NDAA") (Public Law 113-291), as modified by section 537 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92), and in accordance with the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended) and 41 C.F.R. § 102-3.50(a), established this non-discretionary Committee.
3. Objectives and Scope of Activities: The Committee, pursuant to section 546(c)(1) of the FY 2015 NDAA, will advise the Secretary of Defense and the Deputy Secretary of Defense on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces.
4. Description of Duties: Pursuant to section 546(c)(2) and (d) of the FY 2015 NDAA, the Committee, not later than March 30 of each year, will submit to the Secretary of Defense through the General Counsel (GC) for the Department of Defense (DoD), and the Committees on Armed Services of the Senate and House of Representatives, a report describing the results of the activities of the Committee pursuant to section 546 of the FY 2015 NDAA during the preceding year. The Committee will review, on an ongoing basis, cases involving allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces.
5. Agency or Official to Whom the Committee Reports: The Committee will report to the Secretary and Deputy Secretary of Defense, through the GC DoD.
6. Support: The DoD, through the GC DoD, the Washington Headquarters Services, and the DoD Components, will provide staffing and resources to support the Committee's functions, and will ensure compliance with requirements of the FACA, the Government in the Sunshine Act of 1976 (5 U.S.C. § 552b, as amended) ("the Sunshine Act"), governing Federal statutes and regulations, and established DoD policies and procedures.
7. Estimated Annual Operating Costs and Staff Years: The estimated annual operating cost, including travel, meetings, and contract support, is approximately \$2,000,000. The estimated annual personnel cost to the DoD is 15.0 full-time equivalents.
8. Designated Federal Officer: The Committee's Designated Federal Officer (DFO), pursuant to DoD policy, will be a full-time or permanent part-time DoD employee or military member, designated in accordance with established DoD policies and procedures.

The Committee's DFO is required to be in attendance at all Committee and subcommittee meetings for the entire duration of each and every meeting. However, in the absence of the Committee's DFO, a properly approved Alternate DFO, duly designated to the Committee

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according to DoD policies and procedures, will attend the entire duration of all of the Committee or subcommittee meetings.

The DFO, or the Alternate DFO, will call all of the Committee and its subcommittee meetings; prepare and approve all meeting agendas; and adjourn any meeting when the DFO, or the Alternate DFO, determines adjournment to be in the public interest or required by governing regulations or DoD policies and procedures.

9. Estimated Number and Frequency of Meetings: The Committee will meet at the call of the Committee's DFO, in consultation with the GC DoD and the Committee's Chair. The Committee will meet at a minimum of once per year.
10. Duration: The Committee will remain in effect until terminated as provided for by sections 546(e)(1) and (2) of the FY 2015 NDAA; however, the charter is subject to renewal every two years.
11. Termination: According to sections 546(e)(1) and (2) of the FY 2015 NDAA, the Committee will terminate on the date that is five years after the date the Committee is established unless the Secretary of Defense determines that continuation of the Committee after that date is advisable and appropriate. If the Secretary of Defense determines to continue the Committee after that date, the Secretary of Defense will submit to the President and the Committees on Armed Services of the Senate and House of Representatives a report describing the reasons for that determination and specifying the new termination date for the Committee.
12. Membership and Designation: Pursuant to section 546(b) of the FY 2015 NDAA, the Committee will be composed of no more than 20 members. Committee members selected will have experience with the investigation, prosecution, and defense of allegations of sexual assault offenses. Members of the Committee may include Federal and State prosecutors, judges, law professors, and private attorneys. Members of the Armed Forces serving on active duty may not serve as members of the Committee.

The appointment of Committee members will be authorized by the Secretary of Defense or the Deputy Secretary of Defense, and administratively certified by the GC DoD, for a term of service of one to four years, and their appointments will be renewed on an annual basis in accordance with DoD policies and procedures. Members of the Committee who are not full-time or permanent part-time Federal officers or employees will be appointed as experts or consultants pursuant to 5 U.S.C. § 3109 to serve as special government employee (SGE) members. Committee members who are full-time or permanent part-time Federal officers or employees will be appointed pursuant to 41 C.F.R. § 101-3.130(a) to serve as regular government employee (RGE) members. No member, unless authorized by the Secretary of Defense, may serve more than two consecutive terms of service on the Committee, including its subcommittees, or serve on more than two DoD federal advisory committees at one time.

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All members of the Committee are appointed to provide advice on the basis of their best judgment on behalf of the Government without representing any particular point of view and in a manner that is free from conflict of interest.

Except for reimbursement of official Committee-related travel and per diem, Committee members serve without compensation.

Consistent with authority delegated to DoD Sponsors, the GC DoD will appoint the Committee's Chair from among the membership previously authorized by the Secretary of Defense or Deputy Secretary of Defense.

13. Subcommittees: The DoD, as necessary and consistent with the Committee's mission and DoD policies and procedures, may establish subcommittees, task forces, or working groups to support the Committee.

Establishment of subcommittees will be based upon a written determination, including terms of reference, by the Secretary of Defense, the Deputy Secretary of Defense, or the GC DoD as the DoD Sponsor.

Such subcommittees will not work independently of the Committee and will report all their recommendations and advice solely to the Committee for full deliberation and discussion. Subcommittees, task forces, or working groups have no authority to make decisions and recommendations, orally or in writing, on behalf of the Committee. No subcommittee or any of its members can update or report, orally or in writing, directly to the DoD or any Federal officers or employees. If a majority of Committee members are appointed to a particular subcommittee, then that subcommittee may be required to operate pursuant to the same notice and openness requirements of FACA which govern the Committee's operations.

Pursuant to Secretary of Defense policy, the GC DoD is authorized to administratively certify the appointment of subcommittee members if the Secretary of Defense or the Deputy Secretary of Defense has previously authorized the individual's appointment to the Committee or another DoD advisory committee. If the Secretary of Defense or the Deputy Secretary of Defense has not previously authorized the appointment of the individual to the Committee or another DoD advisory committee, then the individual's subcommittee appointment must first be authorized by the Secretary of Defense or the Deputy Secretary of Defense and subsequently administratively certified by the GC DoD.

Subcommittee members, with the approval of the Secretary of Defense, will be appointed for a term of service of one-to-four years, subject to annual renewals; however, no member will serve more than two consecutive terms of service on the subcommittee. Subcommittee members, if not full-time or part-time Federal officers or employees, will be appointed as experts or consultants pursuant to 5 U.S.C. § 3109 to serve as SGE members. Subcommittee members who are full-time or permanent part-time Federal officers or employees will be appointed pursuant to 41 C.F.R. § 101-3.130(a) to serve as RGE members. With the exception of reimbursement for travel and per diem as it pertains to official travel related to

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the Committee or its subcommittees, subcommittee members will serve without compensation.

The Secretary of Defense authorizes the GC DoD to appoint the chair of any appropriately approved subcommittee from among the subcommittee membership previously authorized by the Secretary of Defense or Deputy Secretary of Defense.

Each subcommittee member is appointed to provide advice on the basis of his or her best judgment on behalf of the Government without representing any particular point of view and in a manner that is free from conflict of interest.

All subcommittees operate under the provisions of the FACA, the Sunshine Act, governing Federal statutes and regulations, and established DoD policies and procedures.

14. Recordkeeping: The records of the Committee and its subcommittees will be managed in accordance with General Record Schedule 6.2, Federal Advisory Committee Records, or other approved agency records disposition schedule, and the appropriate DoD policies and procedures. These records will be available for public inspection and copying, subject to the Freedom of Information Act of 1966 (5 U.S.C. § 552, as amended).
15. Filing Date: February 16, 2018

## APPENDIX C. COMMITTEE MEMBERS

### *In Memoriam*

#### DEAN KEITH M. HARRISON



Keith Harrison began his legal career as a judge advocate in the U.S. Coast Guard. After military service he began what was supposed to be a two-year stint as a law teacher. He went on to spend the next 30 years as member of the full-time faculty at three law schools and a visiting faculty member at four others. In 2016 he joined the faculty of the Savannah Law School as a visiting professor and acting associate dean.

Dean Harrison's primary areas of teaching were in the criminal justice area, including criminal law, criminal procedure, military criminal law, and intellectual property crimes. He was the founding chair of the International Criminal Law & Justice Graduate Programs at Franklin Pierce Law Center. He served as a public member of the Uniform Code of Military Justice Code Committee. He served as a volunteer guardian ad litem for CASA (Court Appointed Special Advocates), New Hampshire. A graduate of Leadership New Hampshire, he served on several arts, education, and community boards, including the Endowment for Health and the board of St. John's College.

In addition to his many professional accomplishments, Dean Harrison was a dear friend, colleague, leader, father, and husband.

#### MS. MARTHA S. BASHFORD, CHAIR



Martha Bashford is the chief of the New York County District Attorney's Office Sex Crimes Unit, which was the first of its kind in the country. Previously she was co-chief of the Forensic Sciences/Cold Case Unit, where she examined unsolved homicide cases that might now be solvable through DNA analysis. Ms. Bashford was also co-chief of the DNA Cold Case Project, which used DNA technology to investigate and prosecute unsolved sexual assault cases. She indicted assailants identified through the FBI's Combined DNA Index System (CODIS) and obtained John Doe DNA profile indictments to stop the statute of limitations where no suspect had yet been identified. She is a Fellow in the American Academy of Forensic Sciences. Ms. Bashford graduated from Barnard College in 1976 (*summa cum laude*) and received her J.D. degree from Yale Law School in 1979. She is a Fellow in both the American College of Trial Lawyers and the American Academy of Forensic Sciences.

### **MAJOR GENERAL MARCIA M. ANDERSON, U.S. ARMY, RETIRED**



Marcia Anderson has been the Clerk of Court for the Bankruptcy Court–Western District of Wisconsin since 1998, where she is responsible for the management of the budget and administration of bankruptcy cases for 44 counties in western Wisconsin. Major General Anderson recently retired in 2016 from a distinguished career in the U.S. Army Reserve after 36 years of service, which included serving as the Deputy Commanding General of the Army’s Human Resources Command at Fort Knox, Kentucky. In 2011, she became the first African American woman in the history of the U.S. Army to achieve the rank of major general. Her service culminated with an assignment at the Pentagon as the Deputy Chief, Army Reserve (DCAR). As the DCAR, she represented the Chief, Army Reserve, and had oversight for the planning, programming, and resource management for the execution of an Army Reserve budget of \$8 billion that supported more than 225,000 Army Reserve soldiers, civilians, and their families. She is a graduate of the Rutgers University School of Law, the U.S. Army War College, and Creighton University.

### **THE HONORABLE LEO I. BRISBOIS**



Leo I. Brisbois has been a U.S. Magistrate Judge for the District of Minnesota chambered in Duluth, Minnesota, since 2010. Prior to his appointment to the bench, Judge Brisbois served as an Assistant Staff Judge Advocate, U.S. Army, from 1987 through 1998, both on active duty and then in the Reserves; his active duty service included work as a trial counsel and as an administrative law officer, both while serving in Germany. From 1991 to 2010, Judge Brisbois was in private practice with the Minneapolis, Minnesota, firm of Stich, Angell, Kreidler, Dodge & Unke, where his practice included all aspects of litigation and appeals involving the defense of civil claims in state and federal courts. Judge Brisbois has also previously served on the Civil Rules and Racial Fairness in the Courts advisory committees established by the Minnesota State Supreme Court, and he has served on the Minnesota Commission on Judicial Selection. From 2009 to 2010, Judge Brisbois was the first person of known Native American heritage to serve as President of the more than 16,000-member Minnesota State Bar Association.

### **MS. KATHLEEN B. CANNON**



Kathleen Cannon is a criminal defense attorney in Vista, California, specializing in serious felony and high-profile cases. Prior to entering private practice in 2011, Ms. Cannon was a public defender for over 30 years, in Los Angeles and San Diego Counties. Over the course of her career, Ms. Cannon supervised branch operations and training programs within the offices and handled thousands of criminal cases. She has completed hundreds of jury trials, including those involving violent sexual assault and capital murder with special circumstances. Since 1994, Ms. Cannon has taught trial advocacy as an adjunct professor of law at California Western School of Law in San Diego, and has been on the faculty of the National Institute of Trial Advocacy as a team leader and teacher. She is past-President and current Training Coordinator for the California Public Defenders’ Association, providing educational seminars for criminal defense attorneys throughout the state of California. Ms. Cannon has lectured on battered women syndrome evidence at the Marine Corps World Wide Training Conference at Marine Corps Recruit Depot (MCRD), San Diego, and was a small-group facilitator for the Naval Justice School course “Defending Sexual Assault Cases” in San Diego. Ms. Cannon has received numerous awards, including Top Ten Criminal Defense Attorney in San Diego, Lawyer of the Year from the North County Bar Association, and Attorney of the Year from the San Diego County Public Defender’s Office.

**MS. MARGARET A. GARVIN**

Margaret “Meg” Garvin, M.A., J.D., is the executive director of the National Crime Victim Law Institute (NCVLI), where she has worked since 2003. She is also a clinical professor of law at Lewis & Clark Law School, where NCVLI is located. In 2014, Ms. Garvin was appointed to the Victims Advisory Group of the United States Sentencing Commission, and during 2013–14, she served on the Victim Services Subcommittee of the Response Systems to Adult Sexual Assault Crimes Panel of the U.S. Department of Defense. She has served as co-chair of the American Bar Association’s Criminal Justice Section Victims Committee, as co-chair of the Oregon Attorney General’s Crime Victims’ Rights Task Force, and as a member of the Legislative & Public Policy Committee of the Oregon Attorney General’s Sexual Assault Task Force. Ms. Garvin received the John W. Gillis Leadership Award from National Parents of Murdered Children in August 2015. Prior to joining NCVLI, Ms. Garvin practiced law in Minneapolis, Minnesota, and clerked for the Eighth Circuit Court of Appeals. She received her bachelor of arts degree from the University of Puget Sound, her master of arts degree in communication studies from the University of Iowa, and her J.D. from the University of Minnesota.

**THE HONORABLE PAUL W. GRIMM**

Paul W. Grimm serves as a U.S. District Judge for the District of Maryland. Previously, he served as a U.S. Magistrate Judge and as Chief Magistrate Judge for the District of Maryland. In 2009, the Chief Justice of the United States appointed Judge Grimm to serve as a member of the Civil Rules Advisory Committee, where he served for six years and chaired the Discovery Subcommittee. Before his appointment to the court, Judge Grimm was in private practice for 13 years, handling commercial litigation. Prior to that, he served as an Assistant Attorney General for Maryland, an Assistant States Attorney for Baltimore County, Maryland, and an active duty and Reserve Army Judge Advocate General’s Corps officer, retiring as a lieutenant colonel in 2001. Judge Grimm has served as an adjunct professor of law at the University of Maryland School of Law and at the University of Baltimore School of Law, and has published many articles on evidence and civil procedure.

**MR. A. J. KRAMER**

A. J. Kramer has been the Federal Public Defender for the District of Columbia since 1990. He was the Chief Assistant Federal Public Defender in Sacramento, California, from 1987 to 1990, and an Assistant Federal Public Defender in San Francisco, California, from 1980 to 1987. He was a law clerk for the Honorable Proctor Hug, Jr., U.S. Court of Appeals for the Ninth Circuit, Reno, Nevada, from 1979 to 1980. He received a B.A. from Stanford University in 1975, and a J.D. from Boalt Hall School of Law at the University of California at Berkeley in 1979. Mr. Kramer taught legal research and writing at Hastings Law School from 1983 to 1988. He is a permanent faculty member of the National Criminal Defense College in Macon, Georgia. He is a Fellow of the American College of Trial Lawyers. He is a member of the Judicial Conference of the United States’ Advisory Committee on Evidence Rules and the ABA Criminal Justice System Council. He was a member of the National Academy of Sciences Committee on Scientific Approaches to Understanding and Maximizing the Validity and Reliability of Eyewitness Identification in Law Enforcement and the Courts. In December 2013, he received the Annice M. Wagner Pioneer Award from the Bar Association of the District of Columbia.

### **MS. JENNIFER GENTILE LONG**



Jennifer Gentile Long (M.G.A., J.D.) is CEO and co-founder of AEquitas and an adjunct professor at Georgetown University Law School. She served as an Assistant District Attorney in Philadelphia specializing in sexual violence, child abuse, and intimate partner violence. She was a senior attorney and then Director of the National Center for the Prosecution of Violence Against Women at the American Prosecutors Research Institute. She publishes articles, delivers trainings, and provides expert case consultation on issues relevant to gender-based violence and human trafficking nationally and internationally. Ms. Long serves as an Advisory

Committee member of the American Law Institute's Model Penal Code Revision to Sexual Assault and Related Laws and as an Editorial Board member of the Civic Research Institute for the Sexual Assault and Domestic Violence Reports. She graduated from Lehigh University and the University of Pennsylvania Law School and Fels School of Government.

### **MR. JAMES P. MARKEY**



Jim Markey has over 30 years of law enforcement experience with the Phoenix Police Department. Serving in a variety of positions, Mr. Markey was recognized with more than 30 commendations and awards. For over 14 years he directly supervised the sexual assault unit, which is part of a multidisciplinary sexual assault response team co-located in the City of Phoenix Family Advocacy Center. Mr. Markey oversaw the investigation of more than 7,000 sexual assaults, including more than 150 serial rape cases. In 2000, he was able to secure Violence Against Women grant funding to design, develop, and supervise a first-of-its-kind

sexual assault cold case team with the City of Phoenix. This team has been successful in reviewing nearly 4,000 unsolved sexual assault cases dating back over 25 years. For the past 15 years Mr. Markey has been a certified and nationally recognized trainer, delivering in-person and online webinar training for numerous criminal justice organizations on sexual assault investigations and response. Currently, he is employed with the Research Triangle Institute (RTI) located in Durham North as a Senior Law Enforcement Specialist. His work in the Applied Justice Research Unit includes assistance for the DOJ Bureau of Justice Assistance Sexual Assault Kit Initiative (SAKI), providing technical assistance and training to 54 SAKI grantees across the United States. He also developed and directs the SAKI – Sexual Assault Unit Assessment (SAUA) Team; this team has conducted independent and comprehensive reviews for four major police agencies, assessing a range of areas in their response to sexual assault. In addition to the DAC-IPAD, Mr. Markey currently serves as a member of the National Institute of Justice (NIJ) Sexual Assault Forensic Evidence Reporting (SAFER) Working Group and Editorial Team, NIJ Cold Case Working Group, Arizona Commission on Victims in the Courts (COVIC), Arizona Forensic Science Advisory Committee, and Massage Envy Franchising's Safety Advisory Council. Jim continues to work as a trainer and facilitator in the area of sexual violence for the International Association of Chiefs of Police (IACP) and the International Association of College Law Enforcement Administrators (IACLEA).

**DR. JENIFER MARKOWITZ**

Jenifer Markowitz is a forensic nursing consultant who specializes in issues related to sexual assault, domestic violence, and strangulation, including medical-forensic examinations and professional education and curriculum development. In addition to teaching at workshops and conferences around the world, she provides expert testimony, case consultation, and technical assistance and develops training materials, resources, and publications. A forensic nurse examiner since 1995, Dr. Markowitz regularly serves as faculty and as an expert consultant for the Judge Advocate General's (JAG) Corps for the U.S. Army, Navy, Air Force, Marine Corps, and Coast Guard. Past national activities include working with the Army Surgeon General's office to develop a curriculum for sexual assault medical-forensic examiners working in military treatment facilities (subsequently adopted by the Navy and Air Force); with the U.S. Department of Justice Office on Violence Against Women (OVW) to develop a national protocol and training standards for sexual assault medical-forensic examinations; with the Peace Corps to assess the agency's multidisciplinary response to sexual assault; with the U.S. Department of Defense to revise the military's sexual assault evidence collection kit and corresponding documentation forms; and as an Advisory Board member for the National Sexual Violence Resource Center. In 2004, Dr. Markowitz was named a Distinguished Fellow of the International Association of Forensic Nurses (IAFN); in 2012, she served as IAFN's President.

**CHIEF MASTER SERGEANT OF THE AIR FORCE RODNEY J. MCKINLEY, U.S. AIR FORCE, RETIRED**

Chief Master Sergeant of the Air Force Rodney J. McKinley represented the highest enlisted level of leadership and, as such, provided direction for the enlisted corps and represented their interests, as appropriate, to the American public and to those in all levels of government. He served as the personal advisor to the Chief of Staff and the Secretary of the Air Force on all issues regarding the welfare, readiness, morale, and proper utilization and progress of the enlisted force. Chief McKinley is the 15th chief master sergeant appointed to the highest noncommissioned officer position. His background includes various duties in medical and aircraft maintenance, and he served 10 years as a first sergeant. He also served as a command chief master sergeant at wing, numbered Air Force, and major command levels. He is currently the co-chair of the Air Force Retiree Council and frequently is a guest speaker at bases across the Air Force. He is an honors graduate of St. Leo College, Florida, and received his master's degree in human relations from the University of Oklahoma.

### **BRIGADIER GENERAL JAMES SCHWENK, U.S. MARINE CORPS, RETIRED**



BGen Schwenk was commissioned as an infantry officer in the Marine Corps in 1970. After serving as a platoon commander and company commander, he attended law school at the Washington College of Law, American University, and became a judge advocate. As a judge advocate he served in the Office of the Secretary of Defense, the Office of the Secretary of the Navy, and Headquarters, Marine Corps; he served as Staff Judge Advocate for Marine Forces Atlantic, II Marine Expeditionary Force, Marine Corps Air Bases West, and several other commands; and he participated in several hundred courts-martial and administrative discharge boards. He represented the Department of Defense on the television show *American Justice*, and represented the Marine Corps in a Mike Wallace segment on *60 Minutes*. He retired from the Marine Corps in 2000.

Upon retirement from the Marine Corps, BGen Schwenk joined the Office of the General Counsel of the Department of Defense as an associate deputy general counsel. He was a legal advisor in the Pentagon on 9/11, and he was the primary drafter from the Department of Defense of many of the emergency legal authorities used in Afghanistan, Iraq, the United States, and elsewhere since that date. He was the principal legal advisor for the repeal of “don’t ask, don’t tell,” for the provision of benefits to same-sex spouses of military personnel, in the review of the murders at Fort Hood in 2009, and on numerous DoD working groups in the area of military personnel policy. He worked extensively with the White House and Congress, and he retired in 2014 after 49 years of federal service.

### **DR. CASSIA C. SPOHN**



Cassia Spohn is a Foundation Professor and Director of the School of Criminology and Criminal Justice at Arizona State University. She received a Ph.D. in political science from the University of Nebraska–Lincoln. Prior to joining the ASU faculty in 2006, she was a faculty member in the School of Criminology and Criminal Justice at the University of Nebraska at Omaha for 28 years. She is the author or co-author of seven books, including *Policing and Prosecuting Sexual Assault: Inside the Criminal Justice System* and *How Do Judges Decide? The Search for Fairness and Equity in Sentencing*. Her research interests include prosecutorial and judicial decision making; the intersections of race, ethnicity, crime, and justice; and sexual assault case processing decisions. In 2013, she received ASU’s Award for Leading Edge Research in the Social Sciences and was selected as a Fellow of the American Society of Criminology.

**MS. MEGHAN A. TOKASH**

Meghan Tokash is an Assistant United States Attorney (AUSA) at the U.S. Department of Justice serving the Western District of New York in the violent crimes unit. For eight years she served as a judge advocate in the U.S. Army Judge Advocate General's Corps, where she prosecuted a wide range of cases relating to homicide, rape, sexual assault, domestic violence, and child abuse. AUSA Tokash was selected by the Judge Advocate General of the U.S. Army to serve as one of 15 Special Victim Prosecutors; she worked in the Army's first Special Victim Unit at the Fort Hood Criminal Investigation Division Office and U.S. Army Europe/Central Command. Previously, AUSA Tokash served as an Army trial defense counsel and as a civilian victim-witness liaison officer for the Department of the Army. AUSA Tokash clerked for the United States Court of Appeals for the Armed Forces. She is a graduate of the Catholic University Columbus School of Law. She earned her master of laws degree in trial advocacy from the Beasley School of Law at Temple University, where at graduation she received the program's Faculty Award.

**THE HONORABLE REGGIE B. WALTON**

Judge Walton was born in Donora, Pennsylvania. In 1971 he graduated from West Virginia State University, where he was a three-year letterman on the football team and played on the 1968 nationally ranked conference championship team. Judge Walton received his law degree from the American University, Washington College of Law, in 1974.

Judge Walton assumed his current position as a U.S. District Judge for the District of Columbia in 2001. He was also appointed by President George W. Bush in 2004 as the Chair of the National Prison Rape Elimination Commission, a commission created by Congress to identify methods to reduce prison rape. The U.S. Attorney General substantially adopted the Commission's recommendations for implementation in federal prisons; other federal, state, and local officials throughout the country are considering adopting the recommendations. U.S. Supreme Court Chief Justice William Rehnquist appointed Judge Walton in 2005 to the federal judiciary's Criminal Law Committee, on which he served until 2011. In 2007 Chief Justice John Roberts appointed Judge Walton to a seven-year term as a Judge of the U.S. Foreign Intelligence Surveillance Court, and he was subsequently appointed Presiding Judge in 2013. He completed his term on that court on May 18, 2014. Upon completion of his appointment to the Foreign Intelligence Surveillance Court, Judge Walton was appointed by Chief Justice Roberts to serve as a member of the Judicial Conference Committee on Court Administration and Case Management.

Judge Walton traveled to Russia in 1996 to instruct Russian judges on criminal law in a program funded by the U.S. Department of Justice and the American Bar Association's Central and East European Law Initiative Reform Project. He is also an instructor in Harvard Law School's Advocacy Workshop and a faculty member at the National Judicial College in Reno, Nevada.



## **APPENDIX D. COMMITTEE PROFESSIONAL STAFF**

### **COMMITTEE STAFF**

Colonel Steven B. Weir, USA, JAG Corps,  
Staff Director

Ms. Julie K. Carson, Deputy Staff Director

Mr. Dale Trexler, Chief of Staff

Dr. Janice Chayt, Investigator

Ms. Theresa Gallagher, Attorney-Advisor

Ms. Nalini Gupta, Attorney-Advisor

Ms. Amanda Hagy, Senior Paralegal

Ms. Patricia Ham, Attorney-Advisor

Mr. Glen Hines, Attorney-Advisor

Mr. R. Chuck Mason, Attorney-Advisor

Ms. Marguerite McKinney, Analyst

Ms. Meghan Peters, Attorney-Advisor

Ms. Stacy Powell, Senior Paralegal

Ms. Stayce Rozell, Senior Paralegal

Ms. Terri Saunders, Attorney-Advisor

Ms. Kate Tagert, Attorney-Advisor

### **COMMITTEE CONSULTANTS**

Dr. Alice Falk, Editor

Ms. Laurel Prucha Moran, Graphic Designer

Dr. William Wells, Criminologist

### **DESIGNATED FEDERAL OFFICERS**

Mr. Dwight H. Sullivan,  
Associate Deputy General Counsel for  
Military Justice  
U.S. Department of Defense  
Designated Federal Officer

Mr. David J. Gruber,  
Associate Deputy General Counsel for  
Military Personnel, Readiness, and Voting  
U.S. Department of Defense  
Alternate Designated Federal Officer

Major Israel King, USAF  
Office of the General Counsel  
U.S. Department of Defense  
Alternate Designated Federal Officer



## APPENDIX E.

# DAC-IPAD REQUESTS FOR INFORMATION (SETS 1–10)

### DAC-IPAD REQUESTS FOR INFORMATION SUBMITTED TO ORGANIZATIONS WITHIN THE DEPARTMENT OF DEFENSE AND THE MILITARY SERVICES

- RFI Set 1:** Request for Information from the Department of Defense (DoD) Sexual Assault and Response Office (SAPRO) and Service Judge Advocates General (JAG) Corps for Lists of Court-Martial Cases Completed in Fiscal Year 2016 (June 20, 2017)
- RFI Set 2:** Request for Information from DoD Office of Inspector General (DoD OIG) for DoD OIG Sexual Assault Investigation Evaluations (June 22, 2017)
- RFI Set 3:** Request for Information from Military Criminal Investigation Organizations (MCIOs) for Service MCIO Adult Sexual Assault Case Data for Fiscal Year 2016 (June 29, 2017)
- RFI Set 4:** Request for Information and Request for Meeting Presenters Regarding Legal and Sexual Assault Response Training for Commanders and Expedited Transfer Data for Fiscal Year 2016 (September 11, 2017)
- RFI Set 5:** Request for Information from MCIOs for Service MCIO Adult Sexual Assault Case Data for Fiscal Year 2017 (October 30, 2017)
- RFI Set 6:** Request for Information from DoD SAPRO and Service JAG Corps for Court-Martial Cases Completed in Fiscal Year 2017 (January 10, 2018)
- RFI Set 7:** Request for Information from Service JAG Corps for Court-Martial Cases Completed in Fiscal Year 2017 (January 25, 2018)
- RFI Set 8:** Request for Information from MCIOs for Service MCIO Policy Documents Related to Sexual Assault Investigations (April 18, 2018)
- RFI Set 9:** (Canceled)
- RFI Set 10:** Request for Information from Service JAG Corps for Court-Martial Cases Completed in Fiscal Year 2018 (September 18, 2018)

Digital versions of the DAC-IPAD RFIs are available online at <https://dacipad.whs.mil/>. In accordance with the Freedom of Information Act (FOIA) and the Federal Advisory Committee Act of 1972 (FACA), the Department of Defense is the release authority for agency documents provided to the DAC-IPAD in response to the Committee's information requests.

**Request for Information from DoD SAPRO and Service JAG Corps**

**RFI Set 1, Questions 1–3**

**Date of Request: June 20, 2017**

*[Aggregated Data from RFI Set 1 Responses Are Provided in Appendix I, Below]*

**I. Purpose**

- A. The DAC-IPAD is a federal advisory committee established by the Secretary of Defense pursuant to section 546 of the National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291), as amended.
- B. The mission of the Committee is to advise the Secretary of Defense on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces.
- C. The DAC-IPAD requests the below information to facilitate its required review of cases involving allegations of sexual misconduct on an ongoing basis for purposes of providing advice to the Secretary of Defense.

**II. Summary of Requested Response Dates**

Response Date	Question(s)	Department or Organization
21 Jul 17	1	DoD SAPRO – Provide DSAID information to each Military Service.
11 Aug 17	2	Services – Provide list of cases meeting RFI criteria to the DAC-IPAD using the format in Attachment 1.
22 Sep 17	3	Services – Provide case documents for all cases to the DAC-IPAD via secure electronic file transfer. If an electronic record of trial (e-ROT) is available, the DAC-IPAD staff will obtain the desired documents from the e-ROTs received.

**III. Court-Martial Cases Completed in Fiscal Year 2016 (FY 2016)**

The DAC-IPAD requests case documents for all adult-victim sexual assault cases completed by the Military Services in FY16 that involved a preferred charge of sexual assault (the same criteria as in previous RFIs from the Judicial Proceedings Panel for FY12–14 and FY15 cases). This request is not limited to cases listed in the Annual Report on Sexual Assault in the Military (SAPRO Report). The DAC-IPAD seeks all preferred sexual assault cases that were resolved in FY16 at court-martial or through alternate means, regardless of whether the case was reported in the FY16 SAPRO Report or was categorized at any point as a Family Advocacy Program case.

*The DAC-IPAD requests the Services provide this information in two phases:*

- 1. *Identify the cases by case name (e.g., U.S. v. John Doe) and, if the case was reported in the Services' Unrestricted Report Case Synopses enclosed with the FY16 DoD SAPRO Report, provide the line number as identified in the SAPRO Report; and*
- 2. *Provide the documents requested in RFI Question 3 for every identified case.*

**Question 1** (*DoD SAPRO and Services*): The DAC-IPAD requests DoD Sexual Assault Prevention and Response Office (DoD SAPRO) assist the Services in identifying cases listed in each Service Enclosure (“Unrestricted Report Case Synopses”) to the FY16 SAPRO Report.

The DAC-IPAD requests DoD SAPRO provide the Military Services with a copy of the unique DSAID Number and Subject Name for cases listed as involving at least one preferred charge of sexual assault, according to the Military Services’ Unrestricted Report Case Synopses in the FY16 SAPRO report.

***Please provide a completed list to the Military Services by July 21, 2017***

**Question 2** (*Services*): Identification of Cases – The DAC-IPAD requests the Military Services use the information from the Defense Sexual Assault Incident Database (DSAID), provided by DoD SAPRO in response to Question 1, and the Services’ case management systems to identify ALL cases that involve a preferred charge of adult sexual assault and were tried to completion,\* dismissed, or resolved by any alternate means in fiscal year 2016.

\*A “completed” case means any case tried to verdict, dismissed without further action, or dismissed and then resolved by non-judicial or administrative proceedings in FY16. This list includes cases in which a convening authority has taken, or has yet to take, action in FY16. Request the Services provide a copy of the Convening Authority Action once complete.

***Please provide a completed list to the DAC-IPAD by August 11, 2017***

**Question 3** (*Services*): **Court-Martial Records** – For cases identified in Question 2 and Attachment 1, provide copies of the following documents (alternatively, you can provide the e-ROTs for these cases and the DAC-IPAD staff can extract the required documents). *If your Service does not use the specified DD form, please provide Service-equivalent documents:*

1. DD Form 458, Charge Sheet
2. DD Form 457, *Preliminary Hearing Officer’s Report* (include all continuation sheets, but do not include IO [investigating officer] exhibits)
3. Article 34 Pretrial Advice and/or SJA recommendations on alternate disposition
4. If applicable, any document memorializing the Convening Authority’s referral or non-referral decision
5. DD Form 490, *Record of Trial*
6. DD Form 491, *Summarized Record of Trial*
7. DD Form 2707-1, *Report of Result of Trial*
8. Pretrial Agreements (include both the Offer and Appendix A – Quantum)
9. Master Index of Exhibits
10. SJAR [staff judge advocate recommendation] and Addendum
11. Convening Authority Action
12. Victims’ input at pretrial, trial, and post-trial stages

For cases where court-martial charges were dismissed but were followed by non-judicial punishment (NJP) action or resignation/discharge in lieu of trial, please provide the discharge approval document and either the NJP form or the following information:

1. All specifications listed on the NJP form
2. All guilty specifications at NJP

***Please provide case documents to the DAC-IPAD by September 22, 2017***

**Request for Information from DoD OIG**  
**RFI Set 2, Question 1**  
**Request Date: June 22, 2017**

**I. Purpose**

See page E-2.

**II. Requested Response Date**

Response Date	Question(s)	Department or Organization
12 Jul 17	1	DoD OIG – Provide information on sexual assault investigation evaluations

**III. DoD OIG Sexual Assault Investigation Evaluations**

**Question 1** (*DoD OIG*): Please provide the DAC-IPAD with the following:

- A. A copy of the current case evaluation protocol used to complete the DoD OIG “Evaluation of Military Criminal Investigative Organizations’ Adult Sexual Assault Investigations” (DoDIG-2017-054).
- B. A copy of the “Data Call” memorandum used in the most recent “Evaluation of Military Criminal Investigative Organizations’ Adult Sexual Assault Investigations” (DoDIG-2017-054).
- C. Database screenshots, including all of the relative data fields from the Microsoft Access program and other related tools used during the evaluation.
- D. The template for the Microsoft Access program used to collect and analyze the data.

***Please provide responses to the DAC-IPAD by July 12, 2017***

**Request for Information from Military Criminal Investigation Organizations (MCIOs)**  
**RFI Set 3, Questions 1–18**  
**Request Date: June 29, 2017**

*[Aggregated Data from RFI Set 3 Responses Are Provided in Appendix H, Below]*

### I. Purpose

See page E-2.

### II. Summary of Requested Response Dates

Response Date	Question(s)	Department or Organization
12 Jul 17	1–18	Service MCIOs – Provide adult sexual assault investigation data for cases closed in fiscal year 2016 (FY16)

### III. Service MCIO Adult Sexual Assault (ASA) Case Data for FY 2016

Please provide the requested data for adult sexual assault allegation investigations and information files closed in FY16.

- A “closed case” means the investigation, if conducted, is complete and a final action has been taken.
- An “adult sexual assault allegation” means an unrestricted report of sexual assault made by an individual who is at least 16 years of age at the time of the alleged incident, as defined by DoDI 5505.18, Investigation of Adult Sexual Assault in the Department of Defense.
- “Closed in FY16” means the investigation or information file was closed between October 1, 2015, and September 30, 2016, regardless of the date the allegation was made or investigation opened.

#### Questions:

MCIO Adult Sexual Assault (ASA) Case Data for FY 2016		
1.	Total number of ASA cases closed by MCIO in FY16 (including cases not investigated).	

MCIO ASA Investigations Closed in FY 2016 <sup>1</sup>		
2.	Total number of ASA investigations closed in FY16.	
3.	Number of ASA investigations closed in FY 16 with a military subject. <sup>2</sup>	
4.	Number of ASA investigations closed in FY 16 with a non-military subject.	
5.	Number of ASA investigations closed in FY 16 with an unknown subject.	
6.	Number of ASA investigations closed in FY16 with a non-participating victim witness.	

<sup>1</sup> Do not include cases not investigated (information files).

<sup>2</sup> A “military subject” means an individual in Title 10 status at the time of the alleged incident.

<b>MCIO ASA Cases Closed Without Investigation in FY 2016</b>		
7.	Total number of ASA cases closed without MCIO investigation in FY16 (information files).	
8.	Number of non-investigated ASA cases closed in FY16 with a military subject.	
9.	Number of ASA investigations closed in FY 16 with a non-military subject.	
10.	Number of non-investigated ASA cases closed in FY16 with an unknown subject.	
11.	Number of non-investigated ASA cases closed in FY16 with a non-participating victim witness.	
12.	Number of non-investigated ASA cases closed in FY16 with a military subject prosecuted by a civilian jurisdiction for a sex offense.	

<b>Military Subject ASA Investigations Closed in FY 2016</b>		
13.	Number of ASA investigations of military subjects in which at least one sex offense charge was preferred.	
14.	Number of ASA investigations of military subjects in which sex offense charges were not preferred but non-sex offense charge(s) were preferred.	
15.	Number of investigations of military subjects in which sex offense charges were not preferred but administrative or NJP action was taken for at least one sex offense.	
16.	Number of investigations of military subjects in which sex offense charges were not preferred but administrative or NJP action was taken for non-sex offense(s) only.	
17.	Number of investigations of military subjects in which sex offense charges were not preferred and no further action was taken for any offense.	
18.	Number of investigations with a military subject in which sex offense charges were not preferred and subject was prosecuted by a civilian jurisdiction for a sex offense.	

***Please provide responses to the DAC-IPAD by July 12, 2017***

**Request for Information (RFI) and Request for Meeting Presenters**  
**RFI Set 4, Questions 1–6**  
**Request Date: September 11, 2017**

*[Aggregated Data from RFI Set 4 Responses Related to Expedited Transfers Are Provided in Appendix H, Below]*

**SUBJECT: Legal and Sexual Assault Response Training for Commanders and Expedited Transfer Data for Fiscal Year 2016**

**I. Purpose**

See page E-2.

**II. Requested Response Dates**

Response Date	Question(s)	Department or Organization
5 Oct 17	Presenters	Services and DoD – Provide names and contact information for nominated presenters for each panel.
5 Oct 17	1–3	Services and DoD SAPRO – Provide narrative responses and requested training materials.
5 Oct 17	4–6	Services – Provide requested expedited transfer policies and requested FY16 data using the attached Excel spreadsheets (Attachments A and B).

**III. Request for Meeting Presenters at the October 19–20, 2017, DAC-IPAD Public Meeting in Arlington, Virginia**

**October 19, 2017 – Panel 1** (*Services and DoD*): The DAC-IPAD requests a briefing on the Department of Defense (DoD) and Military Services' expedited transfer policies.

- The Committee would like to hear from an authority from DoD on the expedited transfer policy promulgated by Department of Defense Instruction (DoDI) 6495.02, including the history of the policy, the request approval and transfer process, and the process for transfer of an accused.
- The Committee would like to hear from an authority from DoD on how the Family Advocacy Program handles expedited transfer requests related to adult sexual assault allegations and the policies that govern these transfers.
- The Committee would like to hear from a representative from each Service about the Service-specific policies regarding expedited transfers and the process for reassigning Service members under such policies.
- This panel will tentatively be held from 2:30 p.m. to 3:20 p.m. (EDT) on October 19 and will consist of 6–7 presenters. Each presenter is requested to give a five-minute presentation followed by questions from the Committee.

- **October 19, 2017 – Panel 2** (*Services*): The DAC-IPAD requests presentations from five experienced special victims' counsel/victims' legal counsel (SVCs/VLCs).
- The Committee would like to hear from an experienced SVC/VLC from each Service who has two years of current or very recent experience serving in this capacity, if possible, on their experience with the expedited transfer policy and serving as victims' counsel.
- This panel will tentatively be held from 3:30 p.m. to 5:30 p.m. (EDT) on October 19. Each presenter is requested to give a five- to seven-minute presentation followed by questions from the Committee.

**October 20, 2017 – Panel 1** (*Services*): The DAC-IPAD requests presentations from five company/squadron or Service equivalent-level commanders and five first sergeants/senior enlisted advisors.

- The Committee would like to hear from a company/squadron or Service equivalent-level commander and his or her first sergeant/senior enlisted advisor from each Service with recent experience dealing with sexual assault allegations within the command. The Committee would like to hear about the legal and sexual assault response training received by the presenters and their personal experiences and perspectives dealing with sexual assault allegations and the expedited transfer policy.
- This panel will tentatively be held from 9:00 a.m. to 11:00 a.m. (EDT) on October 20. Each presenter team is requested to give a five-minute presentation followed by questions from the Committee.

**October 20, 2017 – Panel 2** (*Services*): The DAC-IPAD requests presentations from five special court-martial convening authorities with recent experience dealing with sexual assault allegations.

- The Committee would like to hear from a special court-martial convening authority from each Service who has experience dealing with sexual assault allegations. The Committee would like to hear about the legal and sexual assault response training received by the presenters and their personal experiences and perspectives dealing with sexual assault allegations and the expedited transfer policy. [Note: The Committee will not ask the presenters to discuss specific sexual assault cases with which they've been involved, but will ask them to focus more generally on their experiences and training in handling sexual assault allegations.]
- This panel will tentatively be held from 12:30 p.m. to 2:20 p.m. (EDT) on October 20. Each presenter is requested to give a five- to seven-minute presentation followed by questions from the Committee.

#### **IV. Request for Information Regarding Commander Legal and Sexual Assault Response Training**

**Question 1** (*Services*): The DAC-IPAD requests information regarding the type, duration, and frequency of formal, Service-wide UCMJ legal training provided to special and general court-martial convening authorities. What portion of this training is devoted to sexual assault and making appropriate disposition decisions in sexual assault cases? Provide training materials used in this legal training.

**Question 2** (*Services*): The DAC-IPAD requests information regarding the type, duration, and frequency of UCMJ legal training provided to commanders below the level of special court-martial convening authority (i.e., company commanders, squadron commanders). What portion of this training is devoted to sexual assault? Provide training materials used in commander legal training. *[Please provide information on formal, Service-wide training. However, if you have examples of informal, installation-level training (i.e., legal training seminars or classes), please include some of these, as well.]*

**Question 3** (*DoD SAPRO and Services*): The DAC-IPAD requests information on the type and amount of formal, Service-wide training provided to commanders at all levels on sexual assault and supervising victims of sexual assault and accused Service members, to include the following types of training:

- a. The different ways victims may respond to a sexual assault
- b. How to respond to/treat a victim in the commander's unit
- c. How to respond when both the victim and alleged perpetrator are in the commander's unit
- d. Official and peer retaliation and ostracism
- e. How to respond to expedited transfer requests

\* **Responses to questions 1–3 should address the following:**

1. How many hours is the training and how often is it conducted?
2. At what point in the commander's tenure is the training conducted? (e.g., prior to taking command, after assumption of command)
3. Where is the training conducted? (e.g., JAG school, installation)
4. How is the training conducted? (e.g., group setting, one-on-one, computer-based, scenario-based)

## V. Request for Information Regarding Expedited Transfer Requests for Fiscal Year 2016

**Question 4** (*Services*): Please provide copies of (or links to) all current Service-specific policies and procedures related to expedited transfers of adult sexual assault victims and accused.

**Question 5** (*Services*): Please provide a list of all sexual assault-related expedited transfer requests made **by victims** in FY16, including those made pursuant to DoDI 6495.02 or other policies such as transfers made within the purview of the Family Advocacy Program. Please include an identification number (DSAID number, if available) for each request that can be used by DoD and the Services to provide additional information about a specific request or the underlying sexual assault case if requested by the DAC-IPAD at a later date.

For each sexual assault-related expedited transfer request, please provide the information listed below. So that the responses are uniform across the Services, please use Attachment A to provide the data to the DAC-IPAD. The label of each column in the spreadsheet corresponds to the numbered data points below.

1. Identification number (DSAID number for the underlying sexual assault allegation or other case-identifying number if not in DSAID)
2. Requester rank at time of request
3. Requester gender
4. Requester location/installation at the time of the request
5. Requester job title at the time of the request
6. Was the requester represented by an SVC/VLC?
7. Was the request approved or denied?
8. Rank of the decision-maker/approval authority for the request
9. Job title of the decision-maker/approval authority for the request

10. Requested transfer location(s)/installation(s)
11. If transfer was approved, location/installation that requester transferred to
12. If transfer was approved, requester's MOS/job title at new location
13. Was the transfer temporary or permanent?
14. Date of the underlying unrestricted sexual assault report
15. Date of the expedited transfer request
16. Date of the approval/denial of expedited transfer request
17. Date of the transfer of requester, if transfer occurred
18. Disposition of the sexual assault allegation if final

**Question 6** (*Services*): Please provide a list of all sexual assault–related transfers of Service members **accused of sexual assault** in FY16, including an identification number (DSAID number, if available) for each transfer that can be used by DoD and the Services to provide additional information about a specific transfer or the underlying sexual assault case if requested by the DAC-IPAD at a later date.

For each sexual assault–related transfer of an accused, please provide the information listed below. So that the responses are uniform across the Services, please use Attachment B to provide the data. The label of each column in the spreadsheet corresponds to the numbered data points below.

1. Identification number (DSAID number for the underlying sexual assault allegation or other case-identifying number if not in DSAID)
2. Accused rank at time of request
3. Accused gender
4. Accused location/installation at the time of the request
5. Accused job title at the time of the request
6. What was the rank of the decision-maker/approval authority?
7. What was the job title of the decision-maker/approval authority?
8. Location/installation that the accused was transferred to
9. Accused job title at receiving location/installation
10. Date of the underlying unrestricted sexual assault report
11. Date of transfer of accused
12. Was the transfer permanent or temporary?
13. Disposition of the sexual assault allegation if final

**Request for Information from Military Criminal Investigation Organizations**  
**RFI Set 5, Questions 1–2**  
**Request Date: October 30, 2017**

*[Aggregated Data from RFI Set 5 Responses Are Provided in Appendix H, Below]*

**I. Purpose**

See page E-2.

**II. Summary of Requested Response Dates**

Response Date	Question(s)	Department or Organization
15 Nov 17	1	Service MCIOs – Provide adult sexual assault statistics for cases closed in fiscal year 2017 (FY17).
15 Nov 17	2	Service MCIOs – Provide adult sexual assault (penetrative) investigation data for cases closed in FY17 with a military subject.

**III. Service MCIO Adult Sexual Assault (ASA) Case Data for FY 2017**

- MCIOs include Air Force Office of Special Investigations (AFOSI), U.S. Army Criminal Investigation Command (CID), Naval Criminal Investigative Service (NCIS) and Coast Guard Investigative Service (CGIS).
- “Adult sexual assault” means an unrestricted report of sexual assault made by an individual who is at least 16 years of age at the time of the alleged incident, as defined by DoDI 5505.18, *Investigation of Adult Sexual Assault in the Department of Defense*.
- “Closed in FY17” means the investigation or information file was closed between October 1, 2016, and September 30, 2017, regardless of the date the allegation was made or investigation opened.

**IV. Information Requested for FY 2017**

**Question 1** (*Service MCIOs*): Provide the following data listed below. So that the responses are uniform across the Services, please use Attachment A, question 1, to provide the data.

MCIO ASA Investigations Closed in FY 2017		
a.	Total number of ASA investigations closed in FY17	
b.	Number of ASA cases that were closed information only (SIR [serious incident report] only, Closed Only, Info File, and Record Only)	
c.	Number of ASA investigations closed in FY17 with a military subject <sup>1</sup>	
d.	Number of ASA investigations closed in FY17 with multiple military subjects	
e.	Number of ASA investigations closed in FY17 with a non-military subject	
f.	Number of ASA investigations closed in FY17 with an unknown subject	
g.	Number of ASA investigations closed in FY17 with a penetrative offense and a military subject	

**Question 2** (*Service MCIOs*):

Provide data<sup>2</sup> on the following for all FY17 sexual assault investigations<sup>3</sup> for a penetrative sexual offense<sup>4</sup> with a military subject and adult victim closed between October 1, 2016, and September 30, 2017, regardless of the date the allegation was made or the investigation opened. For each investigation, please provide the information listed below. So that the responses are uniform across the Services, please use Attachment A, question 2, to provide the data.

- a. Case Number
- b. Service Branch of Subject(s)
- c. Status of Victim(s) (military or civilian)
- d. Date Closed
- e. Type of Penetrative Offense
- f. Case Clearance Category in Defense Incident-Based Reporting System (DIBRS)
- g. Any disposition (include no action taken or unfounded)

***Please provide responses to the DAC-IPAD by November 15, 2017***

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1 A military subject is an individual in Title 10 status at the time of the alleged incident, subject to punishment under the Uniform Code of Military Justice. Do not include cases that were closed “information only” for question 1, sections c–g.

2 For multiple subjects, include separate entry for each accused with the same case number. For multiple offenses, include only the most aggravated penetrative offense.

3 Include cases that were closed “information only.”

4 “Penetrative sexual offense” means rape and sexual assault, in violation of Article 120; forcible sodomy, in violation of Article 125; and any attempt to commit such offenses, in violation of Article 80.

**Request for Information from DoD SAPRO and Service JAG Corps**  
**RFI Set 6, Questions 1–3**  
**Date of Request: January 10, 2018**

*[Aggregated Data from RFI Set 6 Responses Are Provided in Appendix I, Below]*

**I. Purpose**

See page E-2.

**II. Summary of Requested Response Dates**

Response Date	Question(s)	Department or Organization
12 Feb 18	1	DoD SAPRO – Provide DSAID information to each Military Service.
12 Mar 18	2	Services – Provide list of cases meeting RFI criteria to the DAC-IPAD using the format in Attachment 1.
9 Apr 18	3	Services – Provide case documents for all cases to the DAC-IPAD via secure electronic file transfer. If an electronic record of trial (e-ROT) is available, the DAC-IPAD staff will obtain the desired documents from the e-ROTs received.

**III. Court-Martial Cases Completed in Fiscal Year 2017 (FY17)**

The DAC-IPAD requests case documents for all adult-victim sexual assault cases completed by the Military Services in FY17 that involved a preferred charge of sexual assault (the same criteria as in previous RFI from the DAC-IPAD for FY16 cases). This request is not limited to cases listed in the Annual Report on Sexual Assault in the Military (SAPRO Report). The DAC-IPAD seeks all preferred sexual assault cases that were resolved in FY17 at court-martial or through alternate means, regardless of whether the case was reported in the FY17 SAPRO Report or was categorized at any point as a Family Advocacy Program case.

*The DAC-IPAD requests the Services provide this information in two phases:*

1. *Identify the cases by case name (e.g., U.S. v. John Doe) and, if the case was reported in the Services' Unrestricted Report Case Synopses enclosed with the FY17 DoD SAPRO Report, provide the line number as identified in the SAPRO Report; and*
2. *Provide the documents requested in RFI Question 3 for every identified case.*

**Question 1** (DoD SAPRO and Services): The DAC-IPAD requests DoD Sexual Assault Prevention and Response Office (DoD SAPRO) assist the Services in identifying cases listed in each Service Enclosure (“Unrestricted Report Case Synopses”) to the FY17 SAPRO Report.

The DAC-IPAD requests DoD SAPRO provide the Military Services with a copy of the unique DSAID Number and Subject Name for cases listed as involving at least one preferred charge of sexual assault, according to the Military Services' Unrestricted Report Case Synopses in the FY17 SAPRO report.

*Please provide a completed list to the Military Services by February 12, 2018*

**Question 2 / Identification of Cases** (*Services*): The DAC-IPAD requests the Military Services use the information from the Defense Sexual Assault Incident Database (DSAID), provided by DoD SAPRO in response to Question 1, and the Services' case management systems, to identify ALL cases that involve a preferred charge of adult sexual assault and were tried to completion,\* dismissed, or resolved by any alternate means in fiscal year 2017.

\*A "completed" case means any case tried to verdict, dismissed without further action, or dismissed and then resolved by non-judicial or administrative proceedings in FY17. This list includes cases in which a convening authority has taken, or has yet to take, action in FY17. Request the Services provide a copy of the Convening Authority Action once complete.

***Please provide a completed list to the DAC-IPAD by March 12, 2018***

**Question 3 / Court-Martial Records** (*Services*): For cases identified in Question 2 and Attachment 1, provide copies of the following documents (alternatively, you can provide the e-ROTs for these cases and the DAC-IPAD staff can extract the required documents). *If your Service does not use the specified DD form, please provide Service-equivalent documents:*

1. DD Form 458, Charge Sheet
2. DD Form 457, Preliminary Hearing Officer's Report (include all continuation sheets, but do not include IO exhibits)
3. Article 34 Pretrial Advice and/or SJA recommendations on alternate disposition
4. If applicable, any document memorializing the Convening Authority's referral or non-referral decision
5. DD Form 490, Record of Trial
6. DD Form 491, Summarized Record of Trial
7. DD Form 2707-1, Report of Result of Trial
8. Pretrial Agreements (include both the Offer and Appendix A – Quantum)
9. Master Index of Exhibits
10. SJAR and Addendum
11. Convening Authority Action
12. Victims' input at pretrial, trial, and post-trial stages

For cases where court-martial charges were dismissed but were followed by non-judicial punishment (NJP) action or resignation/discharge in lieu of trial, please provide the discharge approval document and either the NJP form or the following information:

3. All charges and specifications listed on the NJP form
4. All guilty specifications at NJP

***Please provide case documents to the DAC-IPAD by April 9, 2018***

**Request for Information from Service JAG Corps**  
**RFI Set 7, Questions 1–2**  
**Date of Request: January 25, 2018**

*[Aggregated Data from RFI Responses to RFI Set 7 Are Provided in Appendix I, Below]*

**I. Purpose**

See page E-2.

**II. Summary of Requested Response Dates**

Response Date	Question(s)	Department or Organization
26 Feb 18	1	Services – Provide list of cases meeting RFI criteria to the DAC-IPAD using the format in Attachment 1.
26 Mar 18	2	Services – Provide case documents for all cases to the DAC-IPAD via secure electronic file transfer. If an electronic record of trial (e-ROT) is available, the DAC-IPAD staff will obtain the desired documents from the e-ROTs received.

**III. Court-Martial Cases Completed in Fiscal Year 2017 (FY17)**

The DAC-IPAD requests case documents for all adult-victim sexual assault cases completed by the Military Services in FY17 that involved a preferred charge of sexual assault (the same criteria as in previous RFI from the DAC-IPAD for FY16 cases). The DAC-IPAD seeks all preferred sexual assault cases that were resolved in FY17 at court-martial or through alternate means, regardless of whether the case was reported as a SAPR or FAP case.

*The DAC-IPAD requests the Services provide this information in two phases:*

1. *Identify the cases by case name (e.g., U.S. v. John Doe); and*
2. *Provide the documents requested in RFI Question 1 for every identified case.*

**Question 1 / Identification of Cases:** The DAC-IPAD requests the Military Services use the information from the Services' case management systems to identify ALL cases that involve a preferred charge of adult sexual assault and were tried to completion,\* dismissed, or resolved by any alternate means in fiscal year 2017.

\*A “completed” case means any case tried to verdict, dismissed without further action, or dismissed and then resolved by non-judicial or administrative proceedings in FY17. This list includes cases in which a convening authority has taken, or has yet to take, action in FY17. Request the Services provide a copy of the Convening Authority Action once complete.

***Please provide a completed list to the DAC-IPAD by February 26, 2018.***

**Question 2 / Court-Martial Records** (*Services*): For cases identified in Question 1 and Attachment 1, provide copies of the following documents (alternatively, you can provide the e-ROTs for these cases and the DAC-IPAD staff can extract the required documents). *If your Service does not use the specified DD form, please provide Service-equivalent documents:*

1. DD Form 458, *Charge Sheet*
2. DD Form 457, *Preliminary Hearing Officer's Report* (include all continuation sheets, but do not include IO exhibits)
3. Article 34 Pretrial Advice and/or SJA recommendations on alternate disposition
4. If applicable, any document memorializing the Convening Authority's referral or non-referral decision
5. DD Form 490, *Record of Trial*
6. DD Form 491, *Summarized Record of Trial*
7. DD Form 2707-1, *Report of Result of Trial*
8. Pretrial Agreements (include both the Offer and Appendix A – Quantum)
9. Master Index of Exhibits
10. SJAR and Addendum
11. Convening Authority Action
12. Victims' input at pretrial, trial, and post-trial stages

For cases where court-martial charges were dismissed but were followed by non-judicial punishment (NJP) action or resignation/discharge in lieu of trial, please provide the discharge approval document and either the NJP form or the following information:

1. All charges and specifications listed on the NJP form
2. All guilty specifications at NJP

***Please provide case documents to the DAC-IPAD by March 26, 2018.***

**ATTACHMENT 1 – Service Responses to DAC-IPAD RFI Set 7, Question 1****[Military Service] – FY17:**

<b>Case Number</b>	<b>Case Name</b>	<b>Location of Requested Documents</b>
(Example) 1	<i>U.S. v.</i>	(Example: Installation, CCA [court of criminal appeals], Suitland . . . )
12	<i>U.S. v.</i>	
27	<i>U.S. v.</i>	

**Request for Information from Military Criminal Investigation Organizations (MCIOs)**

**RFI Set 8, Question 1**

**Request Date: April 18, 2018**

**I. Purpose**

See page E-2.

**II. Summary of Requested Response Dates**

Response Date	Question(s)	Department or Organization
30 Apr 18	1	Service MCIOs – Provide policy documents

**III. Service MCIOs**

MCIOs include Air Force Office of Special Investigations (AFOSI), U.S. Army Criminal Investigation Command (CID), Naval Criminal Investigative Service (NCIS) and Coast Guard Investigative Service (CGIS).

**IV. Information Requested**

**Question 1** (*Service MCIOs*): Provide a comprehensive list and either an electronic copy of or link to any Service Directives, Instructions, Policy Memoranda (by Service Secretaries, MCIO Commands, Service IGs, etc.), or service-specific Standard Operating Procedures pertaining to initiating and closing investigative activity, and any specific guidance regarding the investigation of sexual assault, including any Memoranda of Understanding with SJAs, civilian prosecutors, and law enforcement concerning investigations, prosecutions, and victims. (DoD issuances available through <http://www.esd.whs.mil/DD/DoD-Issuances/> are not requested.)

**Request for Information from  
RFI Set 9  
Date of Request:**

There was no RFI Set 9 submitted.

**Request for Information from Service JAG Corps**

**RFI Set 10, Questions 1–2**

**Date of Request: September 18, 2018**

*[Responses for RFI Set 10 Are in Progress;  
Aggregated Data Will Be Provided in a Subsequent DAC-IPAD Report]*

**I. Purpose**

See page E-2.

**II. Summary of Requested Response Dates**

Response Date	Question(s)	Department or Organization
15 Oct 18	1a	Services – Provide list of cases meeting RFI criteria to the DAC-IPAD using the format in Attachment 1.
15 Oct 18	1b	Services – Provide narrative description identifying specific database(s) utilized and the steps necessary, including search terms/variables, to create the list of cases meeting RFI criteria.
15 Nov 18	2	Services – Provide case documents for all cases to the DAC-IPAD via secure electronic file transfer. If an electronic record of trial (e-ROT) is available, the DAC-IPAD staff will obtain the desired documents from the e-ROT received.

**III. Court-Martial Cases Completed in Fiscal Year 2018 (FY 2018)**

The DAC-IPAD requests case documents for all adult-victim sexual assault cases completed by the Military Services in FY18 that involved a preferred charge of sexual assault. The DAC-IPAD seeks all preferred sexual assault cases that were resolved in FY18 at court-martial or through alternate means, regardless of whether the case was reported as a SAPR or FAP case.

*The DAC-IPAD requests the Services provide this information in two phases:*

1. *Identify the cases by case name (e.g., U.S. v. John Doe); and*
2. *Provide the documents for each of the cases identified in RFI Question 1a.*

**Question 1a / Identification of Cases:** The DAC-IPAD requests the Military Services use the information from the Services’ case management systems to identify ALL cases that involve a preferred charge of adult sexual assault and were tried to completion,\* dismissed, or resolved by any alternate means in fiscal year 2018.

\*A “completed” case means any case tried to verdict, dismissed without further action, or dismissed and then resolved by non-judicial or administrative proceedings in FY18. This list includes cases in which a convening authority has taken, or has yet to take, action in FY18.

**Question 1b / Methodology:** Provide a narrative description identifying specific database(s) accessed and the individual steps necessary, including search terms/variables, to create the list of cases meeting RFI criteria identified in Question 1a.

*Please provide completed list and narrative to the DAC-IPAD by October 15, 2018.*

**Question 2 / Court-Martial Records:** For cases identified in Question 1a and Attachment 1, provide copies of the following documents (alternatively, you can provide the e-ROTs for these cases and the DAC-IPAD staff can extract the required documents). *If your Service does not use the specified DD form, please provide Service-equivalent documents:*

1. DD Form 458, Charge Sheet
2. DD Form 457, Preliminary Hearing Officer's Report (include all continuation sheets, but do not include IO exhibits)
3. Article 34 Pretrial Advice and/or SJA recommendations on alternate disposition
4. If applicable, any document memorializing the Convening Authority's referral or non-referral decision
5. DD Form 490, Record of Trial
6. DD Form 491, Summarized Record of Trial
7. DD Form 2707-1, Report of Result of Trial
8. Pretrial Agreements (include both the Offer and Appendix A – Quantum)
9. Master Index of Exhibits
10. SJAR and Addendum
11. Convening Authority Action
12. Victims' input at pretrial, trial, and post-trial stages

For cases where court-martial charges were dismissed but were followed by non-judicial punishment (NJP) action or resignation/discharge in lieu of trial, please provide the discharge approval document and either the NJP form or the following information:

1. All charges and specifications listed on the NJP form
2. All guilty specifications at NJP

***Please provide case documents to the DAC-IPAD by November 15, 2018.***

**ATTACHMENT 1 – Service Responses to DAC-IPAD RFI Set 10, Question 1a**

**[Military Service] – FY18:**

<b>Case Name</b>	<b>Location of Requested Documents</b>
<i>U.S. v.</i>	(Example: Installation, CCA, Suitland . . . )
<i>U.S. v.</i>	
<i>U.S. v.</i>	

**APPENDIX F.  
INVESTIGATIVE CASE REVIEW DATA FORM**

Sexual Assault Case Review	
DAC-IPAD Control Number: _____ Date _____ Reviewed by: _____	
Report	
<b>1. MCIO Case Report Number</b>	
<b>2. MCIO Office</b>	
<b>3. Civilian Investigative Agency Involvement</b>	Incident Occurred On / Off Military Installation  Civilian Agency Involved: Yes / No  Agency Name: _____  Civilian Lead: Yes / No  Civilian Prosecution: Yes / No  Comments:
<b>4. All Sexual Assault Offense(s) Reported</b>	
<b>5. Date(s) of Occurrence(s)</b>	
<b>6. Date Reported to MCIO</b>  <b>*(Delayed Report = More than 48 Hours after Incident)</b>	Date: _____  If delayed report, was a reason provided? Yes / No / N/A  Comments:
<b>7. Was Report Originally Restricted</b>	Yes / No / N/A  Date restricted report made: _____

DAC-IPAD Control Number: \_\_\_\_\_

<p><b>8. Date MCIO Report Finalized</b></p> <p><b>8a. Date MCIO Case Closed</b></p>	<p>Date: _____ (Report Finalized)</p> <p>Date: _____ (Case Closed)</p> <p>Comments:</p>
<p><b>9. Reporting Person</b></p> <p><b>*(To Law Enforcement)</b></p>	<p>Relationship:</p> <p><input type="checkbox"/> Victim</p> <p><input type="checkbox"/> Victim Authorized Representative (SARC, SVC/VLC, FAP)</p> <p><input type="checkbox"/> Reported by Command</p> <p><input type="checkbox"/> Third Party _____</p>
<p><b>10. Location of Incident</b></p> <p><b>*(Installation/City/State/Country)</b></p>	
<p><b>11. Location Type</b></p> <p><b>*(Check all that apply)</b></p>	<p>CONUS / OCONUS / Vessel</p> <p>Deployed Location: Yes / No</p> <p><input type="checkbox"/> Barracks/Dormitory                      <input type="checkbox"/> School</p> <p><input type="checkbox"/> On installation housing                      <input type="checkbox"/> Church/Chapel</p> <p><input type="checkbox"/> Private residence                              <input type="checkbox"/> Park/Beach</p> <p><input type="checkbox"/> Office/Workplace                              <input type="checkbox"/> Wooded/Open area</p> <p><input type="checkbox"/> Vehicle    <input type="checkbox"/> Swimming pool</p> <p><input type="checkbox"/> Hotel/Motel                                      <input type="checkbox"/> Daycare/CDC</p> <p><input type="checkbox"/> Club     <input type="checkbox"/> Retail store</p> <p><input type="checkbox"/> Medical/Hospital                              <input type="checkbox"/> Other _____</p> <p><input type="checkbox"/> Unknown</p>

Overall Comments/Summary on Reporting:

DAC-IPAD Control Number: \_\_\_\_\_

<b>Subject</b>	
<b>Name (Last, First, Middle, Suffix)</b> _____	
<b>12. Number of Subjects</b>	_____ (separate checklist for each subject)
<b>13. Status, Grade, &amp; Branch of Service at Time of Incident</b>	<input type="checkbox"/> Active Duty <input type="checkbox"/> Reserves <input type="checkbox"/> National Guard (Pay Grade): _____  Service <input type="checkbox"/> Army <input type="checkbox"/> Air Force <input type="checkbox"/> Navy <input type="checkbox"/> Marine Corps <input type="checkbox"/> Coast Guard
<b>14. Subject Status at Time Investigation Initiated (If different from time of incident)</b>	N/A <input type="checkbox"/> DoD Contractor <input type="checkbox"/> DoD Civilian <input type="checkbox"/> Civilian <input type="checkbox"/> Reserve <input type="checkbox"/> National Guard <input type="checkbox"/> Retiree
<b>15. Assigned Command at Time of Incident</b>	
<b>16. Gender</b>	<input type="checkbox"/> Male <input type="checkbox"/> Female
<b>17. Date of Birth and SSN (Last Six Only)</b>	
<b>18. Race and Ethnicity of Subject</b>	<input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Asian <input type="checkbox"/> Black or African American <input type="checkbox"/> Hispanic, Latino, or Spanish origin <input type="checkbox"/> Middle Eastern or North African <input type="checkbox"/> Native Hawaiian or Other Pacific Islander <input type="checkbox"/> White <input type="checkbox"/> Some other race, ethnicity, or origin <input type="checkbox"/> Unknown
<b>19. Relationship to Victim(s)</b>  <b>*(Per Subject)</b>	<input type="checkbox"/> Not Provided <input type="checkbox"/> Stranger <input type="checkbox"/> Acquaintance <input type="checkbox"/> Friend <input type="checkbox"/> Roommate <input type="checkbox"/> Supervisor <input type="checkbox"/> Subordinate <input type="checkbox"/> Co-Worker <input type="checkbox"/> Intimate Partner <input type="checkbox"/> Former Intimate Partner <input type="checkbox"/> Spouse <input type="checkbox"/> Former Spouse <input type="checkbox"/> Boyfriend/Girlfriend <input type="checkbox"/> Family Member (other than spouse) <input type="checkbox"/> Doctor <input type="checkbox"/> Patient <input type="checkbox"/> Classmate <input type="checkbox"/> Other _____

DAC-IPAD Control Number: \_\_\_\_\_

<p><b>20. Subject Statement to Law Enforcement</b></p> <p><b>*(Check all that apply)</b></p>	<p>Yes / No</p> <p>Date: _____ (Invoked and/or statement)</p> <p><input type="checkbox"/> None (Invoked right to remain silent)</p> <p><input type="checkbox"/> Verbal Statement</p> <p><input type="checkbox"/> Written Statement</p> <p><input type="checkbox"/> Recorded Statement (audio/visual)</p> <p><input type="checkbox"/> Multiple Statements to law enforcement? Number _____</p>
<p><b>21. Was Subject Represented by Counsel at Rights Advisement?</b></p>	<p>Yes / No</p> <p>Comments:</p>
<p><b>22. Subject Statement to Other than Law Enforcement (Oral, Written, Digital)</b></p> <p><b>*(Check all that apply and comment on each)</b></p>	<p>Yes / No</p> <p><input type="checkbox"/> Command</p> <p><input type="checkbox"/> Co-Worker</p> <p><input type="checkbox"/> Spouse</p> <p><input type="checkbox"/> Boyfriend</p> <p><input type="checkbox"/> Girlfriend</p> <p><input type="checkbox"/> Friend</p> <p><input type="checkbox"/> Victim</p> <p><input type="checkbox"/> Other</p> <p>Comments:</p>
<p><b>23. Subject's General Description of Incident in His/Her Statement(s)</b></p> <p><b>*(Check all that apply)</b></p>	<p><input type="checkbox"/> N/A</p> <p><input type="checkbox"/> Denies sexual activity</p> <p><input type="checkbox"/> Confessed to crime</p> <p><input type="checkbox"/> Denies being the offender/Mistaken identity</p> <p><input type="checkbox"/> Other _____</p> <p><input type="checkbox"/> Act was consensual</p> <p><input type="checkbox"/> No recollection</p> <p><input type="checkbox"/> Partial recollection</p>

DAC-IPAD Control Number: \_\_\_\_\_

<p><b>24. Sexual Interaction with Victim</b></p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> N/A</li> <li><input type="checkbox"/> None</li> <li><input type="checkbox"/> Prior consensual sexual contact</li> <li><input type="checkbox"/> Prior consensual penetrative acts</li> <li><input type="checkbox"/> Consensual sexual acts directly preceding the allegation of rape/sexual assault</li> <li><input type="checkbox"/> Consensual sexual acts after the allegation of rape/sexual assault</li> <li><input type="checkbox"/> Communications of a sexual nature preceding incident (including sexting, flirting, nude photos)</li> <li><input type="checkbox"/> Communications of a sexual nature following incident (including sexting, flirting, nude photos)</li> </ul> <p>Comments:</p>
<p><b>25. Subject Consume Alcohol/Drugs at Time of Incident?</b></p>	<p>Alcohol: Yes / No</p> <p>Basis (check all that apply):</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Self-Admission</li> <li><input type="checkbox"/> Witness statement</li> <li><input type="checkbox"/> Victim(s) statement</li> <li><input type="checkbox"/> Other _____</li> </ul> <p>Drugs: Yes / No</p> <p>Basis (check all that apply):</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Self-Admission</li> <li><input type="checkbox"/> Witness statement</li> <li><input type="checkbox"/> Victim(s) statement</li> <li><input type="checkbox"/> Other _____</li> </ul> <p>Comments:</p>  <p>Drug/Alcohol Test: Yes / No</p> <p>Results:</p>

DAC-IPAD Control Number: \_\_\_\_\_

<p><b>26. Factors Affecting Subject Reliability/Credibility</b></p> <p><b>*(Check all that apply)</b></p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> None in file</li> <li><input type="checkbox"/> Collateral misconduct (Underage drinking, fraternization, conduct unbecoming, drug use, adultery, other _____)</li> <li><input type="checkbox"/> Contradictory evidence</li> <li><input type="checkbox"/> Inconsistent statements</li> <li><input type="checkbox"/> Other misconduct (specify)_____</li> <li><input type="checkbox"/> Reported loss of consciousness</li> <li><input type="checkbox"/> Reported loss of memory</li> <li><input type="checkbox"/> M.R.E. 413 evidence (committed other sexual offense)</li> <li><input type="checkbox"/> M.R.E. 404(b) evidence (evidence of other crimes, wrongs or acts to prove motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident)</li> <li><input type="checkbox"/> Corroboration (Physical tangible evidence, witness, medical evidence)</li> <li><input type="checkbox"/> Reputation for or opinion on truthfulness or untruthfulness</li> <li><input type="checkbox"/> Motive to lie</li> <li><input type="checkbox"/> Other _____</li> </ul> <p>Comments:</p>
<p><b>27. Behavioral Health Issues Regarding Subject</b></p>	<p>Yes / No</p> <p>Before Incident</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Inpatient Treatment</li> <li><input type="checkbox"/> Outpatient Treatment</li> <li><input type="checkbox"/> Post-Traumatic Stress Disorder</li> <li><input type="checkbox"/> Traumatic Brain Injury</li> <li><input type="checkbox"/> Drug Treatment</li> <li><input type="checkbox"/> Alcohol Treatment</li> <li><input type="checkbox"/> Other</li> </ul> <p>After Incident</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Inpatient Treatment</li> <li><input type="checkbox"/> Outpatient Treatment</li> <li><input type="checkbox"/> Post-Traumatic Stress Disorder</li> <li><input type="checkbox"/> Traumatic Brain Injury</li> <li><input type="checkbox"/> Drug Treatment</li> <li><input type="checkbox"/> Alcohol Treatment</li> <li><input type="checkbox"/> Other</li> </ul>

DAC-IPAD Control Number: \_\_\_\_\_

<b>27. Continued</b>	Comments:
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Overall Comments/Summary on Subject:

DAC-IPAD Control Number: \_\_\_\_\_

<b>Victim</b>	
<b>Name (Last, First, Middle, Suffix)</b> _____	
<b>28. Number of Victim(s)</b>	_____ <b>(separate checklist for each victim)</b>
<b>29. Status, Grade, &amp; Branch of Service at Time of Incident</b>  <b>(DoD Spouse = Spouse of Suspect &amp; other DoD Spouses)</b>	<input type="checkbox"/> Active Duty <input type="checkbox"/> Reserves <input type="checkbox"/> National Guard (Pay Grade): _____  Service <input type="checkbox"/> Army <input type="checkbox"/> Air Force <input type="checkbox"/> Navy <input type="checkbox"/> Marine Corps <input type="checkbox"/> Coast Guard  <input type="checkbox"/> DoD Spouse <input type="checkbox"/> Civilian <input type="checkbox"/> Other Family Member <input type="checkbox"/> Foreign National <input type="checkbox"/> DoD Civilian <input type="checkbox"/> Other _____ <input type="checkbox"/> DoD Contractor
<b>30. Gender</b>	<input type="checkbox"/> Male <input type="checkbox"/> Female
<b>31. Date of Birth</b>	
<b>32. Race and Ethnicity</b>	<input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Asian <input type="checkbox"/> Black or African American <input type="checkbox"/> Hispanic, Latino, or Spanish origin <input type="checkbox"/> Middle Eastern or North African <input type="checkbox"/> Native Hawaiian or Other Pacific Islander <input type="checkbox"/> White <input type="checkbox"/> Some other race, ethnicity, or origin <input type="checkbox"/> Unknown
<b>33. Relationship to Subject</b>  <b>*(Per Victim)</b>	<input type="checkbox"/> Not Provided <input type="checkbox"/> Stranger <input type="checkbox"/> Acquaintance <input type="checkbox"/> Friend <input type="checkbox"/> Roommate <input type="checkbox"/> Supervisor <input type="checkbox"/> Subordinate <input type="checkbox"/> Co-Worker <input type="checkbox"/> Intimate Partner <input type="checkbox"/> Former Intimate Partner <input type="checkbox"/> Spouse <input type="checkbox"/> Former Spouse <input type="checkbox"/> Boyfriend/Girlfriend <input type="checkbox"/> Family Member (other than spouse) <input type="checkbox"/> Doctor <input type="checkbox"/> Patient <input type="checkbox"/> Classmate <input type="checkbox"/> Other _____

DAC-IPAD Control Number: \_\_\_\_\_

<p><b>34. Sexual Interaction with Subject</b></p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> N/A</li> <li><input type="checkbox"/> None</li> <li><input type="checkbox"/> Prior consensual sexual contact</li> <li><input type="checkbox"/> Prior consensual penetrative acts</li> <li><input type="checkbox"/> Consensual sexual acts directly preceding the allegation of rape/sexual assault</li> <li><input type="checkbox"/> Consensual sexual acts after the allegation of rape/sexual assault</li> <li><input type="checkbox"/> Communications of a sexual nature preceding incident (including sexting, flirting, nude photos)</li> <li><input type="checkbox"/> Communications of a sexual nature following incident (including sexting, flirting, nude photos)</li> </ul> <p>Comments:</p>
<p><b>35. Evidence of Sexual Behavior or Predisposition (M.R.E. 412)</b></p>	<p>Specific instances to prove someone other than subject was the source of semen, injury, or other physical evidence  Evidence of specific instances of sexual behavior with the subject to show consent  Constitutionally required  None reported</p> <p>Comments:</p>
<p><b>36. Prior Allegation of Sexual Assault by Victim</b></p>	<p>Yes / No</p> <p>If yes, annotate case number(s) if available: _____</p> <p>Comments:</p>
<p><b>37. Victim Statement to Law Enforcement</b></p> <p><b>*(Check all that apply)</b></p>	<p>Yes / No</p> <p>If yes, date: _____</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> None provided</li> <li><input type="checkbox"/> Verbal statement</li> <li><input type="checkbox"/> Written statement</li> <li><input type="checkbox"/> Recorded statement (audio/visual)</li> <li><input type="checkbox"/> Multiple statements to law enforcement? Number _____</li> </ul>

DAC-IPAD Control Number: \_\_\_\_\_

<p><b>38. Circumstances of Statement to Law Enforcement</b></p> <p><b>*(Check all that apply)</b></p>	<p><input type="checkbox"/> N/A</p> <p><input type="checkbox"/> SVC/VLC present</p> <p><input type="checkbox"/> Other person present _____</p> <p><input type="checkbox"/> Joint statement with military and civilian law enforcement</p> <p><input type="checkbox"/> Statement taken immediately, within 48 hours of report</p> <p><input type="checkbox"/> Statement taken after 48 hours of report</p>
<p><b>39. Did Statement to Law Enforcement Establish Probable Cause Offense Occurred?</b></p>	<p>Yes / No / N/A</p>
<p><b>40. Victim Statement to Other than Law Enforcement (Oral, Written, Digital)</b></p> <p><b>*(Check all that apply and comment on each)</b></p>	<p>Yes / No</p> <p>Command</p> <p>Co-worker</p> <p>Spouse</p> <p>Boyfriend</p> <p>Girlfriend</p> <p>Friend</p> <p>Suspect</p> <p>SANE</p> <p>SARC</p> <p>FAP</p> <p>Other</p> <p>Comments:</p>
<p><b>41. Did Victim Participate in the Investigation?</b></p>	<p>Yes / Declined</p> <p>If victim declined, at what stage of the process did they stop cooperating?</p> <p><input type="checkbox"/> Reporting                      <input type="checkbox"/> Investigation</p> <p><input type="checkbox"/> Preliminary Hearing        <input type="checkbox"/> Court-Martial</p> <p><input type="checkbox"/> Other _____</p> <p>Comments:</p>

DAC-IPAD Control Number: \_\_\_\_\_

<p><b>42. Did Victim Provide Input to the Command/SJA?</b></p>	<p>Yes / No</p> <p>What type of input?</p> <p><input type="checkbox"/> Pursue courts-martial                      <input type="checkbox"/> Pursue non-judicial punishment</p> <p><input type="checkbox"/> Pursue counseling statement              <input type="checkbox"/> Pursue administrative separation</p> <p><input type="checkbox"/> Other administrative action              <input type="checkbox"/> Take no action</p> <p><input type="checkbox"/> Refer to civilian court/authority</p> <p><input type="checkbox"/> Other _____</p>
<p><b>43. SVC/VLC Representation?</b></p>	<p>Yes / No / N/A</p> <p>SVC/VLC present at time of statement? Yes / No / N/A</p> <p>Date of Notice of Representation _____</p>
<p><b>44. Did Victim Request Expedited Transfer?</b></p>	<p>Yes / No / N/A</p> <p>If yes, was it approved: Yes / No</p> <p>Date: _____</p>
<p><b>45. Victim Consume Alcohol/Drugs at Time of Incident?</b></p>	<p>Alcohol: Yes / No</p> <p>Basis (check all that apply):</p> <p><input type="checkbox"/> Self-Admission                      <input type="checkbox"/> Subject(s) statement</p> <p><input type="checkbox"/> Witness statement                      <input type="checkbox"/> Other _____</p> <p>Drugs: Yes / No</p> <p>Basis (check all that apply):</p> <p><input type="checkbox"/> Self-Admission                      <input type="checkbox"/> Subject(s) statement</p> <p><input type="checkbox"/> Witness statement                      <input type="checkbox"/> Other _____</p> <p>Comments:</p> <p>Drug/Alcohol Test: Yes / No</p> <p>Results:</p>

DAC-IPAD Control Number: \_\_\_\_\_

<p><b>46. Did Victim Report Being Incapacitated?</b></p>	<p>Yes / No</p> <p><input type="checkbox"/> Blacked-out      <input type="checkbox"/> Asleep  <input type="checkbox"/> Unconscious      <input type="checkbox"/> Passed-out  <input type="checkbox"/> Partial memory      <input type="checkbox"/> Drugged  <input type="checkbox"/> No memory      <input type="checkbox"/> Other</p> <p>Comments:</p>
<p><b>47. Factors Affecting Victim Reliability/Credibility</b>   <b>*(Check all that apply)</b></p>	<p><input type="checkbox"/> None in file  <input type="checkbox"/> Collateral misconduct (Underage drinking, fraternization, conduct unbecoming, drug use, adultery, other _____)  <input type="checkbox"/> Contradictory evidence  <input type="checkbox"/> Inconsistent statements  <input type="checkbox"/> Other misconduct (specify) _____  <input type="checkbox"/> Reported loss of consciousness  <input type="checkbox"/> Reported loss of memory  <input type="checkbox"/> Corroboration (Physical tangible evidence, witness, medical evidence)  <input type="checkbox"/> Reputation for or opinion on truthfulness or untruthfulness  <input type="checkbox"/> Motive to lie  <input type="checkbox"/> Other _____</p> <p>Comments:</p>
<p><b>48. Behavioral Health Issues Regarding Victim</b></p>	<p>Yes / No</p> <p>Before Incident</p> <p><input type="checkbox"/> Inpatient Treatment  <input type="checkbox"/> Outpatient Treatment  <input type="checkbox"/> Post-Traumatic Stress Disorder  <input type="checkbox"/> Traumatic Brain Injury  <input type="checkbox"/> Drug Treatment  <input type="checkbox"/> Alcohol Treatment  <input type="checkbox"/> Other</p>

DAC-IPAD Control Number: \_\_\_\_\_

<b>48. Continued</b>	<p>After Incident</p> <ul style="list-style-type: none"><li><input type="checkbox"/> Inpatient Treatment</li><li><input type="checkbox"/> Outpatient Treatment</li><li><input type="checkbox"/> Post-Traumatic Stress Disorder</li><li><input type="checkbox"/> Traumatic Brain Injury</li><li><input type="checkbox"/> Drug Treatment</li><li><input type="checkbox"/> Alcohol Treatment</li><li><input type="checkbox"/> Other</li></ul> <p>Comments:</p>
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Overall Comments/Summary on Victim:

DAC-IPAD Control Number: \_\_\_\_\_

<b>Evidence</b>	
<b>49. Victim Sexual Assault Kit Collected?</b>	Yes / No  Date collected: _____  Date testing completed: _____
<b>50. Location of Victim Sexual Assault Exam</b>	<input type="checkbox"/> Military Health Care Facility <input type="checkbox"/> Civilian Health Care Facility <input type="checkbox"/> N/A
<b>51. Who Conducted the Victim's Sexual Assault Exam?</b>	<input type="checkbox"/> Military Examiner <input type="checkbox"/> DoD Civilian <input type="checkbox"/> Civilian Provider <input type="checkbox"/> N/A
<b>52. Subject Sexual Assault Kit Collected?</b>	Yes / No  Date collected: _____  Date testing completed: _____
<b>53. Location of Subject Sexual Assault Exam</b>	<input type="checkbox"/> Military Health Care Facility <input type="checkbox"/> Civilian Health Care Facility <input type="checkbox"/> N/A
<b>54. Who Conducted the Subject's Sexual Assault Exam?</b>	<input type="checkbox"/> Military Examiner <input type="checkbox"/> DoD Civilian <input type="checkbox"/> Civilian Provider <input type="checkbox"/> N/A
<b>55. <u>DNA Results</u></b>  <b>*(Both Subject &amp; Victim)</b>	Yes / No  Comments:

DAC-IPAD Control Number: \_\_\_\_\_

<p><b>56. Evidence of Use/Threat of Force</b></p> <p><b>*(Based on totality of file)</b></p>	<p>Yes / No</p> <p><input type="checkbox"/> Physical                      <input type="checkbox"/> Weapon</p> <p><input type="checkbox"/> Coercion                      <input type="checkbox"/> Threat</p> <p><input type="checkbox"/> Threat to Others</p> <p>Physical injury – Yes / No</p> <p><input type="checkbox"/> Bruising                      <input type="checkbox"/> Cuts</p> <p><input type="checkbox"/> Broken bones                      <input type="checkbox"/> Redness</p> <p><input type="checkbox"/> Scrapes</p> <p>Comments:</p>
<p><b>57. Eyewitness(es) to Sexual Activity</b></p>	<p>Yes / No</p> <p>Number of witnesses: 1--5 / 6--10 /</p> <p>11+ Comments:</p>
<p><b>58. Third-Party Witness(es)</b></p> <p><b>*(To events or statements before, during, or after the assault)</b></p>	<p>Yes / No</p> <p>Number of witnesses: 1--5 / 6--10 /</p> <p>11+ Comments:</p>
<p><b>59. Electronic Evidence</b></p>	<p>Yes / No</p> <p><input type="checkbox"/> Victim                      <input type="checkbox"/> Subject                      <input type="checkbox"/> Witness</p> <p>    o Cell phone                      o Cell phone                      o Cell phone</p> <p>    o Computer                      o Computer                      o Computer</p> <p>    o Social media                      o Social media                      o Social media</p> <p>    o Other                      o Other                      o Other</p> <p>Comments:</p>

DAC-IPAD Control Number: \_\_\_\_\_

<p><b>60. Other Evidence</b></p>	<p>Yes / No</p> <p>Comments:</p>
<p><b>61. Pretext Communication</b></p>	<p>Yes / No</p> <p>Type:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Phone call</li> <li><input type="checkbox"/> Text message</li> <li><input type="checkbox"/> Email</li> <li><input type="checkbox"/> In person</li> <li><input type="checkbox"/> Other</li> </ul> <p>Results:</p> <ul style="list-style-type: none"> <li>Supports Victim's Account</li> <li>Supports Subject's Account</li> <li>Neither</li> </ul> <p>Comments:</p>

Overall comments/Summary on evidence:

DAC-IPAD Control Number: \_\_\_\_\_

<b>Case Information</b>	
<b>62. Investigator Bias</b>	<input type="checkbox"/> No indication of bias <input type="checkbox"/> Bias against victim <input type="checkbox"/> Bias against suspect
<b>63. Commander Disposition</b>  <b>*(Check all that apply)</b>	<input type="checkbox"/> Action Taken      Date: _____  <input type="checkbox"/> Preferral <input type="checkbox"/> Non-judicial punishment <input type="checkbox"/> Civilian authority <input type="checkbox"/> Other administrative action <input type="checkbox"/> Separation o Administrative o Resignation/Discharge in lieu of court-martial o Other Separation _____ <input type="checkbox"/> Other _____  <input type="checkbox"/> No Action Taken      Date: _____  <input type="checkbox"/> No Reason Provided <input type="checkbox"/> Unfounded o Baseless   o False   o Not specified <input type="checkbox"/> Prosecution declined <input type="checkbox"/> Insufficient evidence <input type="checkbox"/> Victim uncooperative <input type="checkbox"/> Lack of jurisdiction <input type="checkbox"/> No probable cause <input type="checkbox"/> Other _____  <input type="checkbox"/> None Provided  Comments:
<b>64. Any Legal Memoranda Pertaining to Investigation/Disposition</b>	<input type="checkbox"/> None provided <input type="checkbox"/> Judge Advocate explanation _____ o Probable Cause    Yes / No <input type="checkbox"/> Prosecution Memorandum o Probable Cause    Yes / No <input type="checkbox"/> Other _____  Comments:

DAC-IPAD Control Number: \_\_\_\_\_

<p><b>65. Probable Cause Determination per DoDI 5505.11 and 5505.14 (FBI and CODIS Submissions)</b></p>	<p>Yes / No</p> <p><input type="checkbox"/> Probable cause <input type="checkbox"/> No probable cause</p> <p>Comments:</p>
<p><b>66. Commander Action Taken for Collateral Misconduct</b></p>	<p>Suspect: Yes / No</p> <p>Comments:</p> <p>Victim: Yes / No / N/A</p> <p>Comments:</p>
<p><b>**67. Is the Command Action Decision Reasonable Based on the Totality of the Investigative File?</b></p>	<p>Yes / No</p> <p>Comments:</p>

**\*\*The reasonableness decision applies to the type of case being reviewed. In “no action taken” cases – Is the Commander’s decision to take “No Action” on the penetrative sexual assault offense reasonable? In “preferred” cases – Is the Commander’s decision to “Prefer” on the penetrative sexual assault offense reasonable?**

Additional Comments:

DAC-IPAD Control Number: \_\_\_\_\_

<b>Preferral</b>	
<b>68. Post-Preferral Documents</b>	<p>Article 32 Report: Yes/ No</p> <p>Preliminary Hearing Officer find probable cause on the penetrative offense: Yes / No</p> <p>Comments:</p> <p>SJA Advice: Yes / No</p> <p>Comments:</p>
<b>69. <u>Based on the Totality of the Investigative File:</u></b>	
<b>Was There Probable Cause to Believe an Offense Was Committed and the Accused Committed It?</b>	<p>Yes / No</p> <p>Comments:</p>
<b>Was There Sufficient Admissible Evidence Beyond a Reasonable Doubt to Obtain and Sustain a Conviction?</b>	<p>Yes / No</p> <p>Comments:</p>

DAC-IPAD Control Number: \_\_\_\_\_

<b>**Is the Ultimate Command Action Decision Reasonable?</b>	Yes / No  Comments:
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**\*\*The reasonableness decision applies after referral. Is the ultimate decision to refer to courts-martial, accept a plea, dismiss SA offenses, offer Administrative Separation, Non-judicial Punishment, or some other administrative action on non-SA offenses reasonable?**

Additional Comments:

DAC-IPAD Control Number: \_\_\_\_\_

<b>Staff Only</b>	
<b>70. Case Clearance Classification</b>	MCIO DIBRS / NIBRS Classification: <input type="checkbox"/> Unfounded <input type="checkbox"/> Arrest or equivalent <input type="checkbox"/> Death of offender <input type="checkbox"/> Prosecution declined <input type="checkbox"/> Extradition declined <input type="checkbox"/> Juvenile <input type="checkbox"/> Victim declined to cooperate <input type="checkbox"/> Case not cleared <input type="checkbox"/> Referred for Court-Martial <input type="checkbox"/> Non-judicial punishment (Article 15) <input type="checkbox"/> Not Applicable
<b>71. Is DIBRS/NIBRS Closure Listed by MCIO Consistent with Action Taken Reported by MCIO?</b>	Yes / No  Comments:

Additional Comments:



## APPENDIX G. STATISTICAL REPORT ON SEXUAL ASSAULT INVESTIGATIONS CLOSED IN FISCAL YEAR 2017: RESULTS FROM A SAMPLE OF 164 CASES

The sample of case file data was analyzed in order to provide an understanding of patterns of relationships between case characteristics. Through these analyses it is possible to better understand the nature of these cases and to better understand potential reasons why patterns of outcomes are observed. The analyses presented here represent an initial examination of variables believed to be of interest to the DAC-IPAD. The expectation is that after continued consideration of the case file data, the patterns presented here, and issues identified through other sources of information (expert testimony, policy discussions, proposed reforms, Committee deliberations, staff input, etc.), the Committee may recommend specific analyses to shed light on issues and questions.

### CASE CLOSURE STATUS

A concern is that cases are being closed using categories that are inconsistent across decision points. Inconsistent categorization of closure reasons is problematic when reporting information, because information may not accurately characterize closure rationale. In addition, inconsistent reporting may indicate that decision makers are using different criteria when determining the reason for closing cases. Ascertaining the extent to which such inconsistencies are problems can begin with analysis of how closure categories are used across decision points. This will reveal the extent to which cases are closed consistently and inconsistently. The analysis below presents this information for 122 investigations in which the command did not take action on the case.

TABLE 1. NUMBER OF COMMAND DECISION REASONS PROVIDED

Number of Reasons	n	%
0 <sup>a</sup>	36	29.5
1	64	52.5
2	21	17.2
3	1	1.0

<sup>a</sup> Includes the following categories: “no reason provided” and “none provided.”

Table 1 shows that commanders did not provide a reason in 36 cases (29.5%), provided one reason in 64 cases (52.5%), and provided multiple reasons for their “no action” decisions in 21 cases (17.2%).

**TABLE 2. COMMAND REASONS PROVIDED**

Reason Provided	n <sup>a</sup>	% <sup>b</sup>
Insufficient Evidence	47	43.1
Victim Uncooperative / Victim Declined	23	21.1
No Probable Cause	20	18.3
Prosecution Declined	6	5.5
Unfounded		
Baseless	5	4.6
False	3	2.8
Not Specified	3	2.8
Other	2	1.8
No Reason Provided	36	
<i>Total</i>	<i>145</i>	<i>100</i>

<sup>a</sup> Counts of reasons sum to 109 because in 22 cases, multiple reasons were provided.

<sup>b</sup> Percentages are based on 109 reasons provided.

Table 2 presents information about the reasons commanders provided for not taking action in a case. The most common reason given was the lack of sufficient evidence (43.1%, n = 47), followed by victim declination or refusal to participate (21.1%, n = 23), and then by the lack of probable cause (18.3%, n = 20). In 36 investigation case files, no reason was included.

**TABLE 3. JAG PROBABLE CAUSE DETERMINATIONS**

Probable Cause Determination	n	% <sup>a</sup>
Yes	31	32.3
No	65	67.7
No Determination Provided	26	
<i>Total</i>	<i>122</i>	<i>100</i>

<sup>a</sup> Percentages are based on 96 cases in which a determination was provided.

A comparison of command decision reasons (Table 2) and probable cause determinations by JAGs (Table 3) shows a substantial difference. JAGs reported that probable cause did not exist in 65 cases, while commanders indicated that there was no probable cause less frequently, in 20 cases.

**TABLE 4. DIBRS CLEARANCE<sup>A</sup>**

	<b>n</b>	<b>%<sup>b</sup></b>
Prosecution Declined	41	33.9
Unfounded	36	29.8
Arrest or Equivalent	29	24.0
Victim Declined to Cooperate	15	12.4
Missing	1	
<i>Total</i>	<i>122</i>	<i>100</i>

<sup>a</sup> The Coast Guard reports to NIBRS, not DIBRS, but their NIBRS submissions are captured in this table, with the exception of one case with no classification.

<sup>b</sup> Percentages are based on 121 cases in which a determination classification was provided.

Table 4 presents information about DIBRS closure classification in the sample of cases. “Prosecution declined” (33.9%, n = 41) and “unfounded” (29.8%, n = 36) were the two most commonly used categories. In contrast, commanders indicated that 11 cases were unfounded. Commanders were more likely to report that no action was taken because the victim declined (n = 23) than DIBRS indicates (n = 15).

**TABLE 5. MCIO CLOSURE CATEGORIZATION**

<b>Reason Provided</b>	<b>n</b>	<b>%<sup>a</sup></b>
No Action	58	55.2
Unfounded	27	25.7
Prosecution Declined	10	9.5
Victim Declined	6	5.7
Non-Judicial Punishment (Art. 15)	2	1.9
Insufficient Evidence	1	1.0
Referred to Courts-Martial	1	1.0
Unknown/Missing	17	
<i>Total</i>	<i>122</i>	<i>100</i>

<sup>a</sup> Percentages are based on 105 cases in which a closure categorization was provided.

MCIO closure information is presented in Table 5 and shows inconsistencies when compared to the other decision points. For example, MCIOs reported that 27 cases were unfounded, a number smaller than what was found in DIBRS (n = 36) but greater than what was reported by commanders (n = 11). MCIOs provided the fewest reports of victims declining (n = 6). In 17 cases, no closure classification was reported.

**TABLE 6. CLOSURE CLASSIFICATION COMPARISON**

	<b>Command Decision<sup>a</sup></b>	<b>Probable Cause<sup>b</sup></b>	<b>DIBRS<sup>c</sup></b>	<b>MCIO<sup>d</sup></b>
No Probable Cause	20 (18.3%)	65 (67%)	N/A	N/A
Unfounded	11 (10.1%)	N/A	36 (29.8%)	27 (25.7%)
Prosecution Declined	6 (5.5%)	N/A	41 (33.9%)	10 (9.5%)
Victim Declined / Did Not Participate	23 (21.1%)	N/A	15 (12.4%)	6 (5.7%)
Insufficient Evidence	47 (43.1%)	N/A	N/A	1 (1.0%)

<sup>a</sup> Percentages are based on 109 reasons commanders provided for the no action decision and mirror values in Table 2 above.

<sup>b</sup> Percentage is based on 96 cases in which a probable cause determination was made by a judge advocate.

<sup>c</sup> Percentages are based on 121 cases classified by DIBRS.

<sup>d</sup> Percentages are based on 105 cases classified by MCIOs.

Table 6 shows the percentage of closure disposition classifications made by commanders and investigators, as well as the probable cause determination by judge advocates and by the DIBRS categories. Every entry populates a different federal database. Not all closure classifications are used across the four decision points, so it is not possible to make direct comparisons; interpreting the differences is therefore complicated. For example, commanders employ the term “insufficient evidence” because DoD SAPRO uses it, but DIBRS does not. MCIOs do not use the “no probable cause” classification. Thus, it is unreasonable to expect case closure classifications to be consistent across all four decision points. However, the data allow for an understanding of the categories that are used in different combinations. For instance, it is possible to determine the ways in which commanders and MCIOs classify cases when it has been determined that no probable cause exists at the probable cause determination decision point. To take another example, it is possible to determine the DIBRS and MCIO classifications when commanders used the “insufficient evidence” classification.

*No Probable Cause:* Commanders reported that there was no probable cause in 20 cases, while JAGs reported no probable cause in 65 cases.

*Unfounded:* At the command decision point, 11 cases in the sample were classified as unfounded, while MCIOs classified 27 cases as unfounded and DIBRS classified 36 cases as unfounded.

*Prosecution Declined:* The “prosecution declined” classification is used most often at the DIBRS decision point (41 cases), and in fewer cases by MCIOs (10 cases) and by commanders (6 cases). MCIOs and commanders use this classification in similar numbers of cases.

*Victim Declined / Did Not Participate:* Commanders determined that victims declined or did not participate in the largest number of cases (23 cases), followed by DIBRS (15 cases) and MCIOs (6 cases).

Table 6 shows that three classifications are consistent across the commander decision, the DIBRS classification, and the MCIO decision: unfounded, prosecution declined, and victim declined/victim did not participate. It is possible to determine the extent to which these classifications were used consistently by examining specific cases.

*Unfounded:* Three cases were classified as unfounded at all three decision points: the commander, DIBRS, and MCIO decision points. Nineteen cases were classified as unfounded at the DIBRS and MCIO decision points.

Among the 11 cases in which the commander unfounded the case, DIBRS classified 6 as “prosecution declined” and 5 as “unfounded.” Among those 11 cases, MCIO classified 5 as “no action” and 5 as “unfounded,” and 1 was missing a classification.

*Prosecution Declined:* One case was classified as “prosecution declined” at all three decision points.

*Victim Declined/Did Not Participate:* One case was classified as “victim declined / victim did not participate” at all three decision points.

**TABLE 7. JAG PROBABLE CAUSE DETERMINATIONS  
AND CLASSIFICATIONS AT OTHER DECISION POINTS**

	Probable Cause Determination <sup>a</sup>	
	Probable Cause Existed	Probable Cause Did Not Exist
	31 (32.3%)	65 (67.7%)
	Commander Decision <sup>b</sup>	
Unfounded	0 (0.0%)	10 (13.2%)
Prosecution Declined	2 (5.1%)	1 (1.3%)
Victim Declined / Victim Did Not Participate	14 (35.9%)	7 (9.2%)
No Probable Cause	1 (2.6%)	15 (19.7%)
Insufficient Evidence	15 (38.5%)	22 (28.9%)
Other Reasons / No Reason	7 (17.9%)	21 (27.6%)
	DIBRS Classification	
Unfounded	5 (16.1%)	28 (43.1%)
Prosecution Declined	5 (16.1%)	23 (35.4%)
Victim Declined to Participate	9 (29.0%)	5 (7.7%)
Arrest or Equivalent	12 (38.7%)	9 (13.8%)
	MCIO Classification	
Unfounded	2 (6.5%)	21 (32.3%)
Prosecution Declined	2 (6.5%)	1 (1.5%)
Victim Declined to Participate	3 (9.7%)	2 (3.1%)
No Action	20 (64.5%)	29 (44.6%)
Insufficient Evidence	0 (0.0%)	1 (1.5%)
Other Reasons / No Reason Provided	4 (12.9%)	11 (16.9%)

<sup>a</sup> No determination was provided in 26 (21.3%) of the sample of 122 no action cases.

<sup>b</sup> Because commanders provided multiple reasons within cases, counts within this decision point sum to more than 65 (probable cause did not exist cases) + 31 (probable cause did exist cases).

Table 7 presents closure classifications for two groups of cases: those in which a JAG determined probable cause existed and those in which a JAG determined probable cause did not exist. Among the 65 “no probable cause” cases, commanders classified 15 (19.7%) as “no probable cause,” and the most commonly indicated reason for no action by the command was “insufficient evidence” (n = 22, 28.9%). Commanders did not provide a reason for their no action decision in 21 of the 65 cases in which a JAG determined that there was no probable cause (27.6%). DIBRS does not utilize a “no probable cause” classification. In the 65 “no probable cause” cases, the most commonly used DIBRS categories were “unfounded” (n = 28, 43.1%) and “prosecution declined” (n = 23, 35.4%). Combined, the “unfounded” and “prosecution declined” categories were used in 78.5% of the “no probable cause” cases. In 9 (13.8%) of the “no probable cause” cases, the DIBRS classification indicated “arrest or equivalent.” The two most commonly used MCIO classifications within the 65 “no probable cause” cases were “no action” (n = 29, 44.6%) and “unfounded” (n = 21, 32.3%).

### **VICTIM-SUBJECT RELATIONSHIP**

Determining the relationship between the victim and suspect is an important aspect of research on violence, including sexual assault. It is commonly assumed that the relationship between the parties involved will influence the decisions of justice system officials because of evidentiary factors and potential biases. For instance, evidence of a sexual assault may be more difficult to establish in cases in which two individuals have a close relationship and engage in consensual sex. It may be more difficult to overcome a consent defense in such cases than in a situation involving strangers. In addition, uninformed beliefs about so-called true victims—that is, those victimized by strangers or people they do not know well—may lead to the assumption that victims are not likely to be victimized by people close to them. If justice system personnel hold such beliefs, their decision making may be affected. Through data analysis, we can determine the extent to which the victim-suspect relationship may be influencing the progression of and decisions about cases.

Measuring the relationship between victims and suspects is more challenging than it might appear at first glance. In some situations it may not be clear whether two people are friends or acquaintances, or whether neighbors are friends or strangers. When researchers measure the relationship between a victim and suspect or offender, they typically code the information contained in police reports. This was done with the case file data.

The case file data showed that in some cases, multiple relationship categories were used by different data recorders. When more than one type of relationship was reported in the data file, a hierarchy rule was used to code the closest relationship. For example, if a case in the data file indicated “friend/acquaintance,” the case was coded as “friend.” If a case indicated “co-worker/friend,” the case was coded as “friend.” If a case indicated “co-worker/acquaintance,” the case was coded as “co-worker.” If a case indicated “intimate partner/friend,” the case was coded as “intimate partner.” The “intimate partner” category included all current and former spouses, boyfriend, girlfriends, people engaged to be married, and people in the process of getting divorced or separated.

The victim-subject relationship can be measured using variables in the case file data that reflect the victim’s perspective and the subject’s perspective. A first step was to compare the relationship from the perspectives of the victim and of the subject. Doing so provides an understanding of consistencies and inconsistencies and can provide information to clarify ambiguities that may exist within the data. For instance, it may not be clear how to code a case when the victim indicated that the subject was a neighbor or a recruiter. Examining the subject’s perspective on the relationship may provide clarification. Table 8 below summarizes the consistency of the victim’s and subject’s perspectives on their relationship.

**TABLE 8. CONSISTENCY IN VICTIM’S AND SUBJECT’S REPORTED RELATIONSHIP TO THE OTHER**

	n	%
Match (consistent)	132	80.5
Mismatch (inconsistent)	13	7.9
Only one perspective or neither perspective provided in the data	19	11.6

Table 8 shows that the two perspectives were mostly consistent (80.5%). Inconsistencies emerged in 7.9% of the cases. Among the cases with a mismatch, the victim indicated a closer relationship to the suspect than the suspect reported in 6 cases. The subject reported a closer relationship to the victim than the victim reported in the remaining 7 cases. In these 13 cases, the closest relationship is used to create the relationship variable. For example, when the suspect reported “online” as the relationship to the victim and the victim reported the relationship as being a “friend,” the case is coded as “friend.” When the victim reported the relationship to be “acquaintance” and the subject reported it to be “friend,” the case is coded “friend.” When only one perspective on the relationship is contained in the data, that information is used to create the relationship variable. When no perspective is provided and when no information about the relationship is contained in the data, the relationship is coded “unknown/unable to determine.”

**TABLE 9. RELATIONSHIP BETWEEN VICTIM AND SUBJECT**

	n	%
Spouse/intimate partner/former intimate partner	39	23.8
Friend	49	29.9
Co-worker/classmate/roommate	17	10.4
Acquaintance	29	17.7
Online/met for the first time	9	5.5
Stranger	11	6.7
Other <sup>a</sup>	4	2.4
Unknown/unable to determine	6	3.7

*a The “other” category includes “doctor-patient,” “recruiter,” “neighbor,” and “spouse’s best friend.”*

Table 9 presents information about the relationships between the victims and suspects in the sample of cases. The most common relationship is “friend” (29.9%, n = 49), followed by “intimate partner/former intimate partner” (23.8%, n = 39). Together these categories represent over half of the cases and show the parties involved in most cases have had a close relationship. Cases involving acquaintances occurred 17.7% of the time (n = 29). Incidents between strangers were relatively rare, occurring 6.7% of the time (n = 11).

**VICTIM IMPAIRMENT**

Staff members reported that alcohol use by the individuals involved in sexual assaults, both victims and offenders, has been common. Victim impairment during the incident may affect case progression in some of the same ways that the relationship variable does. In cases that involve victims who used drugs or alcohol, decision makers may put at least partial blame on the victim for what occurred. In addition, victim impairment may limit the information and evidence that can be collected about the events. For instance, unclear memories may leave the victim unable to articulate details about events.

Incapacitation is captured from the victim’s personal statement(s) to law enforcement or a third party and not from the opinions of medical personnel, investigators, witnesses, or any other evidence within the case file. When information was collected from case files, data recorders indicated whether the victim was incapacitated during the event and then captured more specific details about the nature of the incapacitation. These details included, for example, “asleep,” “blacked out,” and “partial memory.” In addition, data collectors also recorded information about victim drug and alcohol use prior to and during the assault. These data provide the opportunity to begin exploring this variable.

**TABLE 10. THE NATURE OF VICTIM IMPAIRMENT**

	n	%
Victim Reported Being Impaired		
Yes	91	55.5
No	73	44.5
Nature of Impairment <sup>a</sup>		
Passed Out / Unconscious	39	42.9
Blacked Out / No Memory / Partial Memory	38	41.8
Asleep	10	11.0
Missing	4	4.4

<sup>a</sup> Data were available about the nature of the impairment in 87 cases. Multiple reasons were provided for the impairment in a majority (n = 59) of the 87 cases. To simplify the analyses of impairment reasons, a single variable was created to measure the reason for impairment. The categories for this variable are mutually exclusive. The “passed out / unconscious” category is considered to be the greatest level of impairment, followed by “blacked out / no memory / partial memory,” and finally “asleep.” If the case indicated “passed out” or “unconscious” AND “blacked out,” “partial memory,” or “asleep,” then the case was coded as “passed out / unconscious.” If the case indicated “blacked out,” “partial memory,” or “no memory” AND “asleep,” then the case is coded as “blacked out / no memory / partial memory loss.”

Details about victim impairment are presented in Table 10. Over half of the cases involved a victim who experienced some level of impairment (55.5%). The data file captured information about the nature of impairment. The two most common forms of impairment characterize nearly 85% of all impairment cases: being passed out or unconscious (42.9%, n = 39) and being blacked out / memory loss (41.8%, n = 38).

**TABLE 11. VICTIM IMPAIRMENT AND VICTIM DRUG AND ALCOHOL USE**

	Victim Impaired (n = 91)		Victim Not Impaired (n = 73)	
	Victim Used Alcohol	Victim Did Not Use Alcohol	Victim Used Alcohol	Victim Did Not Use Alcohol
Victim Used Drugs	11	4	0	1
Victim Did Not Use Drugs	73	3	22	50

Table 11 presents information about relationships between victim impairment and drug and alcohol use. Among the cases of victim impairment, 80.2% involved victims who used only alcohol (73/91), 4.4% involved victims who used only drugs (4/91), and 12.1% victims who used both (11/91). In three victim-impairment cases, the case files indicated that the victim did not use drugs or alcohol. In those three cases, one victim reported being asleep, one reported having partial memory and being in a “disassociated state,” and the third victim reported being hypnotized by the suspect.

Among the 73 cases in which the victim was not impaired, alcohol use was reported in 30.1% of the cases (n = 22) and drug use was reported in one case. Drug and alcohol use was not reported in 68.5% of cases in which the victim was not impaired (n = 50).

### **MILITARY JUSTICE SYSTEM PROCESSING IN CASES WITH CIVILIAN JUSTICE SYSTEM INVOLVEMENT**

The case file data can shed some light on a question about military case processing in cases in which civilian criminal justice agencies are involved. More specifically, it is possible to understand how the military justice system processes cases after a civilian prosecutor declines to pursue charges. The analysis below provides information about such cases and their outcomes.

A civilian police agency was involved in 51 cases, which is nearly one-third of the cases in the sample (31.1%). When the incident occurred away from a military installation (n = 80), a civilian police agency was involved 61.3% of the time (n = 49). A civilian agency was involved in 2 cases that occurred on a military installation (2.4% of the 84 cases that occurred on a military installation).

Table 12 below reports on the characteristics of 49 cases that occurred off of a military installation and involved a civilian police agency. Over half of the agencies involved were municipal police agencies; a civilian agency took the lead in 34 cases. When a civilian agency took the lead, a single case was prosecuted in a civilian court; the remaining 33 were not. The most common reason for lack of prosecution in the civilian criminal justice system was that the case was not presented to a prosecutor’s office by a police agency or a prosecutor’s office declined to file charges (n = 22, 45.8%). In 12.5% of the cases the victim declined to participate (n = 6), and the case was transferred to military jurisdiction in 14.6% of the cases (n = 7).

**TABLE 12: CHARACTERISTICS OF CASES THAT OCCURRED OFF INSTALLATION  
AND INVOLVED CIVILIAN OR FOREIGN POLICE AGENCIES**

	n	%
Agency Involved <sup>a</sup>		
Municipal, United States	31	62.0
County Agency, United States	10	20.0
Other	9	18.0
Civilian Investigative Agency Took Lead		
Yes	34	69.4
No	15	30.6
Civilian Prosecutor Prosecuted the Case		
Yes	1	2.0
No	48	98.0
Reasons for Lack of Civilian Prosecution		
Prosecutor Declined / Case Not Presented to Prosecutor	22	45.8
Case Transferred to Military	7	14.6
Victim Declined	6	12.5
Other / Unknown	13	27.1

<sup>a</sup> Counts sum to 50 because one case involved two civilian agencies.

Table 13 presents information about military case processing in the set of 22 cases that occurred away from a military installation, that involved a civilian agency, and that civilian agencies declined to prosecute. Probable cause was determined to exist in 22.7% of cases (n = 5) and to not exist in 27.3% of cases (n = 6); no probable cause determination was offered in half of the 22 cases. A commander took action in all 5 cases in which probable cause was determined to exist; all 5 cases resulted in a conviction for a sexual assault offense. These convictions represent 22.7% of the cases that occurred away from a military installation, that involved a civilian agency, and that civilian agencies declined to prosecute.

**TABLE 13: MILITARY JUSTICE OUTCOMES AMONG CASES THAT OCCURRED OFF INSTALLATION, THAT INVOLVED CIVILIAN OR FOREIGN POLICE AGENCIES, AND THAT WERE NOT PRESENTED TO OR WERE DECLINED BY THE CIVILIAN PROSECUTOR (N = 22)**

	n	%
Probable Cause		
No Determination	6	27.3
Yes, PC Existed	5	22.7
No, PC Did Not Exist	11	50.0
Military Commander Action		
Preferral/Referral	5	22.7
No Action	17	77.3
Military Trial Results		
No Action Taken	17	77.3
Conviction of Sexual Assault	3	13.6
Conviction of Sexual Assault and Non-Sexual Assault	2	9.1

**COMMAND ACTION DECISIONS**

The decision by a commander to take action or no action in a case is important for case progression. This decision determines which cases are screened out of justice processing and which proceed with increased chances of ending in the accused being sanctioned. Table 14 presents information about variables and their relationships to commanders’ decisions to take some action or no action.

**TABLE 14. BIVARIATE RELATIONSHIPS BETWEEN COMMAND ACTION DECISIONS AND VICTIM CHARACTERISTICS, SUBJECT CHARACTERISTICS, INCIDENT CHARACTERISTICS, AND EVIDENCE**

	No Command Action		Command Action	
	n	%	n	%
Incident Location (NS)				
On Installation	61	72.6	23	27.4
Off Installation	60	75.9	19	24.1
Military Service of Subject (NS)				
Army	56	76.7	17	23.3
Air Force	21	63.6	12	36.4
Coast Guard	3	60.0	2	40.0
Marine Corps	18	75.0	6	25.0
Navy	24	80.0	6	20.0
Rank of Subject (NS)				
Officer	10	76.9	3	23.1
Enlisted	112	74.2	39	25.8
Subject Alcohol Use ( $p < .05$ )				
Yes	71	68.9	32	31.1
No	51	83.6	10	16.4
Subject Drug Use (NS)				
Yes	3	60.0	2	40.0
No	119	74.8	40	25.2
Sex of Victim (NS)				
Female	110	73.3	40	26.7
Male	12	85.7	2	14.3
Status of Victim (NS)				
Military	58	75.3	19	24.7
Civilian – Not DoD Spouse	29	63.0	17	37.0
Civilian – DoD Spouse	34	85.0	6	15.0
Relationship Between Victim and Subject ( $p < .05$ )				
Spouse or Intimate Partner	35	89.7	4	10.3
Friend	36	73.5	13	26.5

	No Command Action		Command Action	
	n	%	n	%
Acquaintance	21	72.4	8	27.6
Other Relationships	30	63.8	17	36.2
Victim Age (NS)	23.34 (sd = 5.47)		21.85 (sd = 5.66)	
Victim Impairment ( $p < .05$ )				
Not Impaired	58	79.5	15	20.5
Passed out / unconscious	22	56.4	17	43.6
Blacked out / memory loss	34	89.5	4	10.5
Asleep	4	40.0	6	60.0
Victim Physical Injuries (NS)				
Yes	28	68.3	13	31.7
No	94	76.4	29	23.6
Subject Statement – Defense Offered ( $p < .05$ )				
Confessed	3	17.6	14	82.4
Consensual	79	79.0	21	21.0
Denial	18	90.0	2	10.0
Other / Missing	22	81.5	5	18.5
Victim Participation ( $p < .05$ )				
Yes	67	62.0	41	38.0
Declined	55	98.2	1	1.8
Sexual Assault Exam Performed on Victim ( $p < .05$ )				
Yes	43	65.2	23	34.8
No	79	80.6	19	19.4
Victim SVC / VLC Representation (NS)				
Yes	63	77.8	18	22.2
No	32	71.1	13	28.9
N/A	27	71.1	11	28.9
Probable Cause ( $p < .05$ )				
No Determination Made	26	78.8	7	21.2
Probable Cause Existed	31	47.7	34	52.3
Probable Cause Did Not Exist	65	98.5	1	1.5

Table 14 shows that eight variables are related to the command action decision. The chances that a commander took action in a case were greater when the subject used alcohol, when the victim participated in the investigation, when the victim received a sexual assault medical examination, when a JAG determined that probable causes existed, when the subject confessed, when the victim was asleep or passed out/unconscious, and when the victim and subject were not intimate partners. Nine variables were unrelated to the command decision: the military service branch, the incident location (on- or off-installation), subject rank, subject drug

use, victim sex and age, physical injuries to the victim, victim DoD status, and SVC/VLC representation. Future analyses will explore other outcomes in case processing that are identified as being important and will explore relationships between variables with multivariate models. These models isolate the relationships between outcome variables—in Table 14, the command decision—and the predictor variables. When predictor variables are related to one another, bivariate relationships, like those reported in Table 14, may be inaccurate and misleading. For example, the variables “relationship” and “victim status” overlap and are related to one another. A multivariate model would provide an improved understanding of the relationships between those variables and the command decision.

### **ABOUT THE AUTHOR**

Dr. William Wells is a Professor and Research Director for the Law Enforcement Management Institute of Texas at Sam Houston State University. His research interests include police practices to prevent and reduce crime, police use of forensic evidence, and criminal justice responses to sexual assault crimes. Between 2011 and 2015, Dr. Wells served as the lead research partner on a National Institute of Justice–funded research project with the Houston Police Department that studied and reduced problems related to unanalyzed sex assault kits. In 2014, he collaborated with the Houston Police Department on an experiment that tested different methods of administering photo spreads and lineups to witnesses. The experiment received the Gold Award for Excellence in Law Enforcement Research from the International Association of Chiefs of Police. His recent published research has appeared in such journals as *Injury Prevention*, *Journal of Quantitative Criminology*, *Journal of Interpersonal Violence*, *Journal of Research in Crime & Delinquency*, and *American Journal of Public Health*. In 2008, he served as President of the Midwestern Criminal Justice Association. Before joining SHSU, Dr. Wells worked for eight years in the Center for the Study of Crime, Delinquency, and Corrections at Southern Illinois University Carbondale, where he served as Interim Director and Graduate Program Director.

## APPENDIX H. AGGREGATED SERVICE RESPONSES TO DAC-IPAD RFI SETS 3, 4, AND 5

### Service MCIO Responses to DAC-IPAD RFI Set 3

#### ADULT-VICTIM SEXUAL ASSAULT (ASA) INVESTIGATIVE CASE DATA FOR FISCAL YEAR 2016

Fiscal Year 2015 Active Duty Population by Military Service	Army	Air Force	Navy	Marine Corps	Coast Guard
	491,300 (36%)	311,300 (23%)	327,900 (24%)	183,500 (14%)	36,000 (3%)

MCIO Adult Sexual Assault (ASA) Case Data for FY16		Army (CIDC)	Air Force (AFOSI)	Navy/ Marine Corps (NCIS)	Coast Guard (CGIS)
1.	Total number of ASA cases closed by MCIOs in FY16 (including cases not investigated).	3,225	1,237	1,650	114

MCIO ASA Investigations Closed in FY16		Army (CIDC)	Air Force (AFOSI)	Navy/ Marine Corps (NCIS)	Coast Guard (CGIS)
2.	Total number of ASA cases closed by MCIOs in FY16 (including cases not investigated).	3,000	1,036	1,203	114 <sup>a</sup>
3.	Number of ASA investigations closed in FY16 with a military subject.	2,532	1,013 <sup>b</sup>	949	80 <sup>c</sup>
4.	Number of ASA investigations closed in FY16 with a nonmilitary subject.	241	210	64	13
5.	Number of ASA investigations closed in FY16 with an unknown subject.	227	88	190	23
6.	Number of ASA investigations closed in FY16 with a nonparticipating victim witness.	262	169	157 <sup>h</sup>	N/A
7.	Total number of ASA cases closed without MCIO investigation in FY16 (information files).	225	201	447	N/A
8.	Number of non-investigated ASA cases closed in FY16 with a military subject.	2 (3rd-party misinterpretation)	197	35	N/A

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MCIO ASA Investigations Closed in FY16		Army (CIDC)	Air Force (AFOSI)	Navy/ Marine Corps (NCIS)	Coast Guard (CGIS)
9.	Number of non-investigated ASA cases closed in FY16 with a nonmilitary subject.	106	137	61	N/A
10.	Number of non-investigated ASA cases closed in FY16 with an unknown subject.	117	73	7	N/A
11.	Number of non-investigated ASA cases closed in FY16 with a nonparticipating victim witness.	0	Unknown <sup>e</sup>	N/A	N/A
12.	Number of non-investigated ASA cases closed in FY16 with a military subject prosecuted by a civilian jurisdiction for a sex offense.	0	0	11 <sup>d</sup>	N/A

Military Subject ASA Investigations Closed in FY16		Army (CIDC)	Air Force (AFOSI)	Navy/ Marine Corps (NCIS)	Coast Guard (CGIS)
13.	Number of ASA investigations of military subjects in which at least one sex offense charge was preferred.	482	Unknown <sup>f</sup>	181 <sup>d</sup>	16
14.	Number of ASA investigations of military subjects in which sex offense charges were not preferred but non-sex offense charge(s) were preferred.	16	Unknown	21 <sup>d</sup>	1
15.	Number of investigations of military subjects in which sex offense charges were not preferred but administrative or NJP action was taken for at least one sex offense.	1,045	Unknown	140 <sup>d</sup>	37
16.	Number of investigations of military subjects in which sex offense charges were not preferred but administrative or NJP action was taken for non-sex offense(s) only.	9	Unknown	164 <sup>d</sup>	0
17.	Number of investigations of military subjects in which sex offense charges were not preferred and no further action was taken for any offense.	907 <sup>g</sup> (182 Non-participating)	Unknown	448 <sup>d</sup>	26
18.	Number of investigations with a military subject in which sex offense charges were not preferred and subject was prosecuted by a civilian jurisdiction for a sex offense.	73 (8 other Service Members)	Unknown	11 <sup>d</sup>	0

**Source: Service MCIOs**

- a. CGIS Note: CGIS cases are classified as 'closed-referred' when the investigation is completed. Findings from investigations involving military subjects are forwarded, or 'referred,' to the accused member's Command and the servicing Legal office for adjudication decisions. Once the Command makes that adjudication decision, the CGIS investigation is then classified as 'closed.' Naturally, if the Command desires additional investigation prior to making their adjudication decision, CGIS re-opens the case and conducts the needed investigative steps.
- b. AFOSI Note: An investigation may be counted multiple times. Example: 1) A case may have been initiated as an unknown subject case but later resulted in a subject being identified. This would result in a case being counted in two different categories. 2) A case could be counted in all three categories when there were multiple subjects: one unknown subject, one civilian subject and military subject.
- c. CGIS Note: # 3 - 5 = 116 (INCLUDES 2 INVESTIGATIONS W/1 MIL SUBJECT & 1 NON-MIL SUBJECT.)
- d. NCIS Note: Information is derived from the Defense Sexual Assault Incident Database and only includes cases of non-intimate partner adult sexual assaults.
- e. AFOSI Note: Data for victim participation are not captured for AFOSI Informational Files in AFOSI's investigation management system.
- f. AFOSI Note: Data pertaining to charges and referrals are not captured in AFOSI's investigation management systems. This information is available for active duty suspects in the Air Force's Automated Military Justice Analysis & Management System (AMJAMS). AFOSI can assist in providing case numbers, names and social security numbers of the suspects to help facilitate AMJAMS searches.
- g. CIDC Note: There are various reasons for 'no action taken,' including: beyond the statute of limitations; victim declined to participate; insufficient evidence to meet the elements of proof; no probable cause determination; third party misinterpretation of the events, etc.
- h. NCIS Note: Information is derived from the Defense Sexual Assault Incident Database and only includes cases of non-intimate partner adult sexual assaults.

**RFI Definitions:**

- A closed case means the investigation, if conducted, is complete and a final action has been taken.
- An adult sexual assault allegation means an unrestricted report of sexual assault made by an individual who is at least 16 years of age at the time of the alleged incident as defined by DoDI 5505.18, *Investigation of Adult Sexual Assault in the Department of Defense*.
- Closed in FY16 means the investigation or information file was closed between October 1, 2015, and September 30, 2016, regardless of the date the allegation was made or investigation opened.

**Consolidated Service Responses to DAC-IPAD RFI Set 4 Question 5, Attachment A**

**TABLE 1  
EXPEDITED TRANSFER REQUESTS BY VICTIMS OF SEXUAL ASSAULT IN FISCAL YEAR 2016**

	Army	Navy	Marine Corps	Air Force	Coast Guard	Services Total
Total FY16 Expedited Transfer Requests	276	302	98	206	18	900
Total FY16 Expedited Transfer Requests Denied or Withdrawn	12	5	8	3	1	29
<b>% of Total Requests Approved</b>	96%	98%	92%	99%	94%	<b>97%</b>
FY16 - Service Member Unrestricted Reports (DoD SAPRO Rept)	1,591	955	436	738	116	3,836
% of Service Member Unrestricted Reports Requesting Transfers	17%	32%	22%	28%	16%	<b>23%</b>

**TABLE 2  
APPROVAL RATE FOR EXPEDITED TRANSFER REQUESTS IN FISCAL YEAR 2016**

Army		Navy		Marine Corps		Air Force		Coast Guard	
Approved	263	Approved	292	Approved	90	Approved	203	Approved	17
Approved/Delete	1	Disapproved	10	Denied	5	Disapproved	3	Disapproved	1
Disapproved	2	302		Rescinded	3	206		18	
Intra Post Move	2			98					
NOT CREDIBLE	6								
NOT ELIGIBLE	1								
Withdrawal	1								
276		95%		97%		99%		94%	

**TABLE 3**  
**PERCENTAGE OF APPROVED EXPEDITED TRANSFERS RECEIVING REQUESTED LOCATIONS IN FISCAL YEAR 2016**

<b>Army</b>	<b>Navy</b>	<b>Marine Corps</b>	<b>Air Force</b>	<b>Coast Guard</b>
89%	78%	72%	90%	76%

**TABLE 4**  
**EXPEDITED TRANSFER APPROVAL DECISION MAKER**

Army		Navy		Marine Corps		Air Force		Coast Guard	
Decision-Maker Rank		Decision-Maker Rank		Decision-Maker Rank		Decision-Maker Rank		Decision-Maker Rank	
MG	235	CAPT	289	LtCol	4	O-6	165	O-6	17
COL	1	RDML	10	CDR	2	CV	19	O-7	1
UNK	40	CDR	3	CG	2	O-7	15		
	276		302	Col	1	GS-14	1		18
				Blank	89	GS-15	2		
					98	O-8	3		
						N/A	1		
							206		

**TABLE 5**  
**SVC/VLC REPRESENTATION OF SERVICE MEMBERS REQUESTING EXPEDITED TRANSFER IN FISCAL YEAR 2016**

Army		Navy		Marine Corps		Air Force		Coast Guard	
Y	-	Y	300	Y	-	Y	-	Y	-
N	-	N	2	N	-	N	-	N	-
Blank	276		302	Blank	98	Blank	206	Blank	18
276				98		206		18	

**TABLE 6**  
**SEX OF INDIVIDUAL REQUESTING EXPEDITED TRANSFER**

Army			Navy			Marine Corps			Air Force			Coast Guard		
Female	239	87%	Female	255	84%	Female	81	83%	Female	165	80%	Female	13	72%
Male	37	13%	Male	47	16%	Male	17	17%	Male	41	20%	Male	5	28%
276			302			98			206			18		

**TABLE 7  
FISCAL YEAR 2016 EXPEDITED TRANSFER TIMELINES**

Army		Navy		Marine Corps		Air Force		Coast Guard	
Time from Date of SA Report to ET Request		Time from Date of SA Report to ET Request		Time from Date of SA Report to ET Request		Time from Date of SA Report to ET Request		Time from Date of SA Report to ET Request	
0 - 3 Days	24 9%	0 - 3 Days	76 25%	0 - 3 Days	17 17%	0 - 3 Days	23 11%	0 - 3 Days	2 11%
4 - 30 Days	126 46%	4 - 30 Days	85 28%	4 - 30 Days	23 23%	4 - 30 Days	41 20%	4 - 30 Days	5 28%
31 - 180 Days	80 29%	31 - 180 Days	85 28%	31 - 180 Days	32 33%	31 - 180 Days	38 18%	31 - 180 Days	0 0%
180 - 365 Days	22	180 - 365 Days	38	180 - 365 Days	10	180 - 365 Days	10	296 - 343 Days	3
366 - 697 Days	10	366 - 578 Days	9	366 - 697 Days	9	366 - 641 Days	7	Blank/ UNK/N/A	8
906 - 1178 Days	2	712 - 1144 Days	3	Blank/ UNK/N/A	7	769 Days	1		18
Blank/ UNK/N/A	12	Blank/ UNK/N/A	6		98	Blank/ UNK/N/A	86		
276		302				206			
Time from ET Request to Approval Decision		Time from ET Request to Approval Decision		Time from ET Request to Approval Decision		Time from ET Request to Approval Decision		Time from ET Request to Approval Decision	
0 - 3 Days	106 38%	0 - 3 Days	233 77%	0 - 3 Days	85 87%	0 - 3 Days	190 92%	0 - 3 Days	3 17%
4 - 6 Days	74 27%	4 - 6 Days	30 10%	4 - 6 Days	4 4%	4 - 6 Days	7 3%	4 - 6 Days	9 50%
7 - 10 Days	51	7 - 10 Days	15	7 - 10 Days	1	7 - 10 Days	2	7 - 10 Days	1
11 - 35 Days	43	11 - 36 Days	11	11 - 35 Days	2	11 - 35 Days	7	11 - 19 Days	5
Blank/ UNK/N/A	2	Blank/ UNK/N/A	13	Blank/ UNK/N/A	6		206		18
276		302		98					
Time from ET Approval Decision to Transfer		Time from ET Approval Decision to Transfer		Time from ET Approval Decision to Transfer		Time from ET Approval Decision to Transfer		Time from ET Approval Decision to Transfer	
0 - 3 Days	6	0 - 3 Days	154	0 - 3 Days	22	0 - 3 Days	7	0 - 3 Days	12
31 - 60 Days	91	31 - 60 Days	128	31 - 60 Days	56	31 - 60 Days	66	31 - 55 Days	4
61 - 90 Days	92	61 - 90 Days	10	61 - 90 Days	3	61 - 90 Days	113	Blank/ UNK/N/A	2
91 - 120 Days	3	91 - 120 Days	0	91 - 120 Days	0	91 - 120 Days	7		18
408 - 456 Days	30	147 - 170 Days	2	121 - 398 days	3	137 - 324 Days	4		
Blank/ UNK/N/A	54	Blank/ UNK/N/A	8	Blank/ UNK/N/A	14	Blank	9		
276		302		98		206			

**TABLE 8**  
**FISCAL YEAR 2016 ORIGINATING INSTALLATIONS OF EXPEDITED TRANSFER REQUESTS**

Army		Navy		Marine Corps		Air Force		Coast Guard	
FT Campbell, KY	21	USS GEORGE BUSH (CVN 77)	14	Okinawa, Japan	24	RAMSTEIN	12	Locations with 2 transfers	1
FT Hood, TX	20	USS RONALD REAGAN (CVN 76)	9	Camp Lejeune, NC	19	ELLSWORTH	10	Locations with 1 transfer	16
FT Bragg, NC	19	USS GUNSTON HALL (LSD-44) HAMPTON RDS VA	7	Camp Pendleton, CA	13	DOVER	9		18
FT Bliss, TX	17	USS NIMITZ	7	Twentynine Palms, CA	5	HICKAM	9		
FT Riley, KS	16	USS EISENHOWER	6	Locations with 4 transfers	0	MALMSTROM	7		
JBLM, WA	16	USS PEARL HARBOR (LSD 52)	6	Locations with 3 transfers	3	WRIGHT PATTERSON	7		
FT Drum, NY	13	USS BONHOMME RICHARD (LHD-6)	5	Locations with 2 transfers	6	AVIANO	6		
FT Carson, CO	12	Locations with 4 transfers	4	Locations with 1 transfer	16	MINOT	6		
Schofield Barracks, HI	11	Locations with 3 transfers	5		98	HOLLOMAN	5		
Camp Humphreys, Korea	9	Locations with 2 transfers	27			LANGLEY	5		
FT Polk, LA	7	Locations with 1 transfer	163			LAUGHLIN	5		
FT Sill, OK	7		302			MOODY	5		
FT Stewart, GA	7					MOUNTAIN HOME	5		
Camp Casey, Korea	6					Locations with 4 transfers	6		
FT Irwin, CA	5					Locations with 3 transfers	14		
FT Knox, KY	5					Locations with 2 transfers	11		
Locations with 4 transfers	3					Locations with 1 transfer	24		
Locations with 3 transfers	6						206		
Locations with 2 transfers	12								
Locations with 1 transfer	29								

**TABLE 9  
FISCAL YEAR 2016 DESTINATION INSTALLATIONS OF EXPEDITED TRANSFERS**

Army		Navy		Marine Corps		Air Force		Coast Guard	
FT Carson, CO	26	NAVMEDCEN SAN DIEGO CA	14	Camp Pendleton, CA	14	NELLIS AFB	11	Locations rec. 1 transfer	17
FT Hood, TX	22	NAVMEDCEN PORTSMOUTH	10	Camp Lejeune, NC	11	MACDILL AFB	11	N/A	1
FT Stewart, GA	20	NAVSTA NORFOLK VA	9	Cherry Point, NC	8	TRAVIS AFB	9		
FT Bragg, NC	15	USS ABRAHAM LINCOLN NORVA	8	Miramar, CA	8	SCOTT AFB	9		
JBLM, WA	13	USS GEORGE WASHINGTON NORVA	8	Jacksonville, NC	7	LACKLAND AFB	9		
FT Campbell, KY	11	MARMC NORFOLK VA	7	Okinawa, Japan	6	EGLIN AFB	9		
FT Eustis, VA	8	NAVBASE SAN DIEGO, CA	7	New River, NC	5	MCCHORD AFB	8		
FT Gordon, GA	8	USS THEODORE ROOSEVELT CA	6	Locations rec. 4 transfers	1	LANGLEY AFB	7		
FT Lee, VA	8	USS HARRY S TRUMAN NORVA	5	Locations rec. 3 transfers	1	HURLBURT FIELD	7		
Hunter AAF, GA	8	Locations rec. 4 transfers	4	Locations rec. 2 transfers	4	CHARLESTON AFB	7		
FT Riley, KS	7	Locations rec. 3 transfers	11	Locations rec. 1 transfer	18	TYNDALL AFB	6		
FT Irwin, CA	6	Locations rec. 2 transfers	28	N/A	5	SHAW AFB	6		
FT Knox, KY	6	Locations rec. 1 transfer	118	Blank	1	PATRICK AFB	5		
FT Meade, MD	6	N/A	3			EDWARDS AFB	5		
FT Benning, GA	5	DEMOBILIZED TO HOME	1			BEALE AFB	5		
FT Bliss, TX	5	Blank	2			BARKSDALE AFB	5		
Locations rec. 4 transfers	5					Locations rec. 4 transfers	6		
Locations rec. 3 transfers	4					Locations rec. 3 transfers	4		
Locations rec. 2 transfers	2					Locations rec. 2 transfers	14		
Locations rec. 1 transfer	13					Locations rec. 1 transfer	16		
Local Move	26					Local Move	1		
Req. Orders Deletion	1					Withdrew	1		
Req. Redeploy/DEMOB	1					Blank	5		
Approved Delete	1								
ADVERSE ACTION	3								
NotQualified to Move	1								
N/A	11								
UNK	2								
Blank	6								
Approved Delete	1								

**TABLE 10**  
**FY 2016 EXPEDITED TRANSFER REQUESTS — RELATED SEXUAL ASSAULT CASE DISPOSITIONS**

Army		Navy	
Dispositions of Approved Requests		Dispositions of Approved Requests	
Court-Martial Charge Preferred	62	Court-Martial Charges Preferred: Outcome Unknown	6
Courts-Martial charge preferred for nonsexual assault offense	1	Court-Martial Charges Preferred: Convicted of SA Offense	2
Non-Judicial Punishment	18	Court-Martial Charges Preferred: Convicted of Non SA Offense	8
Non-judicial punishment for non-sexual assault offense	21	Non-Judicial Punishment - Article 120 Contact Offense	13
Administrative Discharge	8	Non-judicial punishment for non-sexual assault offense	36
Administrative discharge for non-sexual assault offense	5	Administrative Discharge	4
Other Adverse Administrative Action	8	Other Administrative Action	6
Other adverse administrative actions for non-sexual assault offense	3	Insufficient evidence	55
Insufficient Evidence to Prosecute Any Offense	42	Unfounded	13
Report was not substantiated	1	Victim declination	8
Unfounded by Investigative Agency	15	Victim declination and Insufficient evidence	8
Offender is Unknown	32	Unknown Subject	18
Victim Declined to Participate in Military Justice Action	5	Victim declination and Unknown Subject	26
Subject is a Civilian or Foreign National	5	Subject was convicted in civilian court of sexual battery	1
A Civilian/Foreign authority is Prosecuting Service Member	4	Local civilian prosecutors declined to take action or charges dismissed	2
Statute of Limitations Expired - No jurisdiction	2	The Special Assistant U.S. Attorney declined to prosecute	1
No investigation: Alleged perpetrator not subject to the UCMJ	2	Victim previously reported this misconduct and Subject had received NJP three years prior	1
No DSAID Case	6	Left Blank	84
No investigation listed in DSAID: Blank field	1		292
No investigation: Other	4	Disposition of Denied Requests	
Subject from Other Service	2	Non-judicial punishment for non-sexual offense	1
Investigation has not been completed	5	Victim declination and Unknown Subject	1
Command action pending	12	Insufficient evidence	3
	264	Unknown Subject	1
Disposition of Denied/Withdrawn Requests		Unfounded	1
Courts-Martial Charge Preferred	3	Left Blank	3
Non-judicial punishment for non-sexual assault offense	1		10
Other Adverse Administrative Action	1		
Offender is Unknown	5		
No investigation: Alleged perpetrator not subject to the UCMJ	1		
No DSAID Case	1		

APPENDIX H. AGGREGATED SERVICE RESPONSES TO DAC-IPAD RFI SETS 3, 4, AND 5

**Marine Corps**

Dispositions of Approved Requests

Court-Martial Charges Preferred	14
Courts-Martial charge preferred for nonsexual assault offense	5
Non-Judicial Punishment	1
Non-judicial punishment for non-sexual assault offense	13
Non-judicial punishment for non-sexual assault offense/Insufficient Evidence of Any Offense	1
Administrative discharge	2
Administrative discharge for non-sexual assault offense	1
Other Adverse Administrative Action	2
Other adverse administrative actions for nonsexual assault offense	2
Insufficient Evidence of Any Offense	11
Unfound by Command	4
Victim declined to participate in military justic action	3
No subject identified	2
No subject identified/Courts-Martial Charge Preferred	1
No Subject Information	4
No subject titled	1
Offender is Unknown	9
Case is not managed by the Marine Corps	3
Subject is a Civilian or Foreign National	3
Pending	8

90

Disposition of Denied/Withdrawn Requests

Other adverse administrative action for nonsexual assault offense	1
No Subject Disposition Information	1
Offender is Unknown	1
Subject is a civilian or foreign national	2
Case is not managed by the Marine Corps	2
Pending	1

8

**Air Force**

Dispositions of Approved Requests

Court-Martial Charge Preferred	27
Courts-Martial charge preferred for nonsexual assault offense	1
Non-Judicial Punishment	6
Non-judicial punishment for non-sexual assault offense	4
Non-Judicial Punishment; Victim Declined to Participate in Military Justice Action	1
Administrative Discharge	1
Other Adverse Administrative Action	4
Insufficient Evidence of Any Offense	9
Unfounded	3
Victim Declined to Participate in Military Justice Action	19
Offender is Unknown	4
Subject Died or Deserted	1
Subject is a Civilian or Foreign National	4
A Civilian/Foreign authority is Prosecuting Service Member	3
Alleged perpetrator not subject to the UCMJ	1
Incident occurred prior to victim's military service	1
Case Pending or Information Not Available	114

203

Disposition of Denied Requests

Non-judicial punishment for non-sexual assault offense	1
Offender is Unknown	1
Case Pending or Information Not Available	1

3

**Coast Guard**

Dispositions of Approved Requests

Charges Preferred - GCM	3
Charges Preferred - SPCM	4
NJP for non-sexual assault	2
Administrative Discharge	3
SA-IDA determined not to prosecute	2
No charges, victim declined to participate	1
Civilian suspect, USAO declined prosecution	1
Pending disposition	1

17

Disposition of Denied Requests

No Suspect Identified	1
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**Combined Service Responses to DAC-IPAD RFI Set 4, Question 6**

**SEXUAL ASSAULT-RELATED TRANSFERS OF SERVICE MEMBERS ACCUSED OF SEXUAL ASSAULT**

**Question 6 (Services):** Please provide a list of all sexual assault-related transfers of Service members **accused of sexual assault** in FY16, including an identification number (DSAID number, if available) for each transfer that can be used by DoD and the Services to provide additional information about a specific transfer or the underlying sexual assault case if requested by the DAC-IPAD at a later date.

<p><b>Army Response:</b></p> <p>The Army does not centrally track transfers of Soldiers accused of sexual assault and is unable to provide the requested data. Pursuant to Army policy, only victims are entitled to request expedited transfers. If a victim requests an expedited transfer, a commander may consider transferring an accused Soldier instead. Accused Soldiers are typically transferred within the same General Court-Martial Convening Authority to maintain jurisdiction under the Uniform Code of Military Justice. These transfers would occur locally on an installation without notice to Headquarters, Department of the Army.</p>
<p><b>Navy Response:</b></p> <p>Navy is not required by higher authority to track sexual assault related transfers of Service members accused of sexual assault, nor does Navy does not currently have a mechanism for tracking such transfers.</p>
<p><b>Marine Corps Response:</b></p> <p>Commanders retain the discretion to transfer an accused Service Member within a unit but away from the victim out of safety concerns or to maintain good order and discipline. These moves are usually intra-unit so our people at Manpower would not track these moves.</p> <p>The Military Justice Branch compiled the response data by reviewing our SARR Forms. Some of the fields in the form are empty because our form does not track the accused job title, transfer installation, accused job title at new location, date of transfer, or if transfer was permanent or temporary.</p> <p>[23 transfers of members accused of sexual assault in FY16]</p>
<p><b>Air Force Response:</b></p> <p>[7 transfers of members accused of sexual assault in FY16]</p>
<p><b>Coast Guard Response:</b></p> <p>[2 transfers of members accused of sexual assault in FY16]</p>

## Service MCIO Responses to DAC-IPAD RFI Set 5, Question 1

## ADULT-VICTIM SEXUAL ASSAULT (ASA) INVESTIGATIONS CLOSED BY MCIOS IN FISCAL YEAR 2017

Classification of Investigations and Subjects	Army (CIDC)	Navy/ Marine Corps (NCIS)	Air Force (AFOSI)	Coast Guard (CGIS)	TOTAL (DoD and Coast Guard)	Percentage of Total Investigations
Total number of ASA investigations closed in FY17.	2,710	2,135	1,274	95	<b>6,214</b>	100%
Number of ASA cases that were closed as information only.	336	657	338	27	<b>1,358</b>	22%
Number of ASA investigations closed in FY17 with a <b>military subject</b> .	1,779	1,156	745	71	<b>3,751</b>	60%
Number of ASA investigations closed in FY17 with multiple military subjects.	86	38	22	–	<b>146</b>	2%
Number of ASA investigations closed in FY17 with a non-military subject.	252	100	164	3	<b>519</b>	8%
Number of ASA investigations closed in FY17 with an unknown subject.	257	184	69	19	<b>529</b>	9%
Number of ASA investigations closed in FY17 with a <b>penetrative</b> offense and a <b>military subject</b> .	828	708	415	35	<b>1,986</b>	32%



## **APPENDIX I. DEMOGRAPHIC AND ADJUDICATION DATA OF SEXUAL OFFENSES RECORDED IN THE DAC-IPAD CASE ADJUDICATION DATABASE**

The Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) was established by the Secretary of Defense in February 2016 pursuant to section 546 of the National Defense Authorization Act for Fiscal Year 2015, as amended. The Committee is tasked by its authorizing statute to advise the Secretary of Defense on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces, drawing on its review of such cases on an ongoing basis.

The following tables provide a general overview of data contained in the DAC-IPAD database for fiscal years 2015–17 and are the source material for the data charts and discussion in Chapter 2 of this report. It should be noted that the DAC-IPAD relies on the Services to report all cases meeting the specified criteria. The DAC-IPAD therefore cannot assert that it has the complete universe of cases throughout the Armed Forces in which a sexual assault charge was filed. The data were also limited to cases in which a complete set of disposition records could be identified and retrieved for analysis. In interpreting the data, readers should keep in mind that

- Percentages may not total 100, owing to rounding errors or missing data.
- Cadets/Midshipmen and warrant officers are included with “officers” in tables.

### **DESCRIPTIVE STATISTICS**

Tables 1 and 2 provide general description and demographic overview of the data contained in the database.

### **BIVARIATE ANALYSES**

Tables 4 through 18 present the results of analyses that estimate relationships between case characteristics and case-processing outcomes. These analyses provide the opportunity to better understand why patterns of case outcomes are observed. Tables 3 through 13 present patterns of relationships between two variables. These are known as bivariate relationships because the focus is on two variables: one is an outcome variable and the other is a predictor variable that can help explain the outcome. Tables 14 to 17 present patterns of relationships between multiple variables. These are known as multivariate relationships because the focus is on multiple variables: one is the outcome variable and several predictor variables help explain the outcome. Outcome variables are also known as dependent variables, and predictor variables are also called independent variables. The purpose of estimating bivariate relationships and multivariate relationships is to gain an understanding about why certain patterns of results are observed.

Analyses of bivariate relationships provide an initial overview of relationships between key variables—for example, type of offense charge and conviction result. These examinations are limited because our outcomes of interest are complex and are affected by many variables. Multivariate models represent a second step, after bivariate relationships are estimated. Multivariate models allow for the inclusion of multiple variables in the

model in order to examine relationships between one outcome, such as conviction, and several predictor variables, such as a military service branch, the relationship between the accused and the victim, and the offense charge. Predictor variables may be related to our outcome of interest (i.e., conviction or not) and to the other predictor variable of interest; multivariate models are therefore useful, because they employ mathematical formulas to isolate the part of each predictor that is truly related to the outcome variable and not the other predictor variables. When a predictor variable is uniquely and strongly related to an outcome variable after being separated from its relationship with the other predictor variables in the model, we conclude that the relationship is “statistically significant.” That is, the relationship observed between a predictor and an outcome would likely be observed over different samples of cases; the relationship is not due to random chance. In other words, we conclude that the relationship truly exists and is not an artifact of the sample of data we examined.

### **MULTIVARIATE ANALYSES**

Two types of multivariate regression models are used because the key outcome (dependent) variables of interest are of two types: dichotomous, with only two categories, or continuous, characterized by numerical values rather than categories. When dependent variables are dichotomous, logistic regression models are appropriate. Ordinary least squares (OLS) models are used when dependent variables are continuous.

Several predictor variables of interest have attributes that are captured by categories, not numbers. An example is Service of the accused. This variable has five categories: Air Force, Army, Coast Guard, Marine Corps, and Navy. Entering categorical variables into regression models requires that one category serves as the reference category against which all other categories are compared. It is necessary to change the reference category to make all relevant comparisons. In the model results presented below, Army serves as the first reference category for the accused’s Service branch. The models are then re-estimated as each of the other branches serves as the reference category and is compared to the others.

**TABLE 1A.  
CASE CHARACTERISTICS (FY 2015)**

	n	%
FY 2015 Total Cases	780	
<b>Military Service of the Accused</b>		
Army	347	44.5
Marine Corps	105	13.5
Navy	122	15.6
Air Force	174	22.3
Coast Guard	32	4.1
<b>Rank of Accused</b>		
Enlisted	722	92.6
Officer	58	7.4
<b>Pay Grade of Accused</b>		
<b>Enlisted</b>		
E-1	30	4.2
E-2	43	6.0
E-3	159	22.0
E-4	187	25.9
E-5	156	21.6
E-6	87	12.0
E-7	46	6.4
E-8	8	1.1
E-9	6	0.8
<b>Officer</b>		
Cadet/Midshipman	3	5.2
W-1	1	1.7
W-2	1	1.7
W-3	2	3.4
W-4	0	0.0
W-5	1	1.7
O-1	3	5.2
O-2	11	19.0
O-3	20	34.5
O-4	12	20.7
O-5	3	5.2
O-6	1	1.7
O-7	0	0.0
O-8	0	0.0
O-9	0	0.0
O-10	0	0.0

DEFENSE ADVISORY COMMITTEE ON INVESTIGATION, PROSECUTION,  
AND DEFENSE OF SEXUAL ASSAULT IN THE ARMED FORCES

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Sex of Accused		
Male	774	99.2
Female	6	0.8
Location of Unit to Which Accused Assigned When Charges Preferred		
CONUS	532	68.2
OCONUS	195	25.0
Vessel	53	6.8
Sex of Victim(s)		
All Female	708	90.8
All Male	69	8.8
Female and Male	3	0.4
Status of Victim(s)		
All Military	526	67.4
All Civilian	223	28.6
Military and Civilian	31	4.0
Accused Charged with Penetrative Offense		
Yes	558	71.5
No	222	28.5
Accused Convicted of Penetrative Offense		
Yes	147	26.3
No	411	73.7
Accused Charged with Contact Offense		
Yes	222	28.5
No	558	71.5
Accused Convicted of Contact Offense		
Yes	44	19.8
No	178	80.2

**TABLE 1B.**  
**CASE CHARACTERISTICS (FY 2016)**

	n	%
FY 2016 Total Cases	768	
<b>Military Service of the Accused</b>		
Army	278	36.2
Marine Corps	123	16.0
Navy	126	16.4
Air Force	218	28.4
Coast Guard	23	3.0
<b>Rank of Accused</b>		
Enlisted	723	94.1
Officer	45	5.9
<b>Pay Grade of Accused</b>		
<b>Enlisted</b>		
E-1	22	3.0
E-2	48	6.6
E-3	154	21.3
E-4	196	27.1
E-5	141	19.5
E-6	90	12.4
E-7	49	6.8
E-8	17	2.4
E-9	6	0.8
<b>Officer</b>		
Cadet/Midshipman	5	11.1
W-1	1	2.2
W-2	6	13.3
W-3	0	0.0
W-4	0	0.0
W-5	0	0.0
O-1	1	2.2
O-2	2	4.4
O-3	17	37.8
O-4	6	13.3
O-5	4	8.9
O-6	3	6.7
O-7	0	0.0

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O-8	0	0.0
O-9	0	0.0
O-10	0	0.0
Sex of Accused		
Male	764	99.5
Female	4	0.5
Location of Unit to Which Accused Assigned When Charges Preferred		
CONUS	542	70.6
OCONUS	174	22.7
Vessel	52	6.8
Sex of Victim(s)		
All Female	721	93.9
All Male	44	5.7
Female and Male	3	0.4
Status of Victim(s)		
All Military	469	61.1
All Civilian	268	34.9
Military and Civilian	31	4.0
Accused Charged with Penetrative Offense		
Yes	579	75.4
No	189	24.6
Accused Convicted of Penetrative Offense		
Yes	106	18.3
No	473	81.7
Accused Charged with Contact Offense		
Yes	189	24.6
No	579	75.4
Accused Convicted of Contact Offense		
Yes	29	15.3
No	160	84.7

**TABLE 1C.  
CASE CHARACTERISTICS (FY 2017)**

	n	%
FY 2017 Total Cases	658	
<b>Military Service of the Accused</b>		
Army	278	42.2
Marine Corps	73	11.1
Navy	125	19.0
Air Force	162	24.6
Coast Guard	20	3.0
<b>Rank of Accused</b>		
Enlisted	607	92.2
Officer	51	7.8
<b>Pay Grade of Accused</b>		
Enlisted	607	
E-1	36	5.9
E-2	34	5.6
E-3	129	21.3
E-4	158	26.0
E-5	110	18.1
E-6	76	12.5
E-7	51	8.4
E-8	13	2.1
E-9	0	0.0
Officer	51	
Cadet/Midshipman	10	19.6
W-1	1	2.0
W-2	4	7.8
W-3	2	3.9
W-4	1	2.0
W-5	0	0.0
O-1	1	2.0
O-2	8	15.7
O-3	16	31.4
O-4	2	3.9
O-5	5	9.8
O-6	1	2.0
O-7	0	0.0
O-8	0	0.0

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O-9	0	0.0
O-10	0	0.0
Sex of Accused		
Male	653	99.2
Female	5	0.8
Location of Unit to Which Accused Assigned When Charges Preferred		
CONUS	477	72.5
OCONUS	126	19.1
Vessel	55	8.4
Sex of Victim(s)		
All Female	613	93.2
All Male	40	6.1
Female and Male	5	0.8
Status of Victim(s)		
All Military	400	60.8
All Civilian	231	35.1
Military and Civilian	27	4.1
Accused Charged with Penetrative Offense		
Yes	485	73.7
No	173	26.3
Accused Convicted of Penetrative Offense		
Yes	98	20.2
No	387	79.8
Accused Charged with Contact Offense		
Yes	173	26.3
No	485	73.7
Accused Convicted of Contact Offense		
Yes	23	13.3
No	150	86.7

**TABLE 2A.**  
**CASE DISPOSITIONS AND CASE OUTCOMES (FY 2015)**

	n	%
FY 2015 Total Cases	780	
<b>Type of Court-Martial</b>		
General Court-Martial	438	78.6
Special Court-Martial	77	13.8
Summary Court-Martial	42	7.5
Not Applicable	223	
<b>Type of Trial Forum</b>		
Military Judge	295	53.1
Panel of Military Members	219	39.4
Summary Court-Martial Officer	42	7.6
Not Applicable/Unknown	224	
<b>Article 32 Hearing Held</b>		
Yes	540	69.2
Waived	58	7.4
No/Not Applicable	182	23.3
<b>Accused Charged with Penetrative Offense</b>		
Convicted of Penetrative Offense	146	26.2
Convicted of Sexual Contact Offense	13	2.3
Convicted of Non-Sex Offense	122	21.9
Alternative Disposition	80	14.3
Acquitted of All Charges	116	20.8
Dismissed Without Judicial Action	81	14.5
<i>(After Article 32 Hearing)</i>	64	79.0
<b>Accused Charged with Sexual Contact Offense</b>		
Convicted of Sexual Contact Offense	44	19.8
Convicted of Non-Sex Offense	90	40.5
Alternative Disposition	47	21.2
Acquitted of All Charges	26	11.7
Dismissed Without Judicial Action	15	6.8
<i>(After Article 32 Hearing)</i>	9	60.0
<b>Outcomes for Cases Referred to Trial</b>		
<b>Accused Charged with Penetrative Offense</b>		
Convicted of Penetrative Offense	146	36.8
Convicted of Sexual Contact Offense	13	3.3
Convicted of Non-Sex Offense	122	30.7
Acquitted of All Charges	116	29.2

Accused Charged with Sexual Contact Offense	160	
Convicted of Sexual Contact Offense	44	27.5
Convicted of Non-Sex Offense	90	56.3
Acquitted of All Charges	26	16.3
Outcomes for Contested Trials		
Accused Charged with Penetrative Offense	345	
Convicted of Penetrative Offense	101	29.3
Convicted of Sexual Contact Offense	6	1.7
Convicted of Non-Sex Offense	122	35.4
Acquitted of All Charges	116	33.6
Accused Charged with Sexual Contact Offense	146	
Convicted of Sexual Contact Offense	30	20.5
Convicted of Non-Sex Offense	90	61.6
Acquitted of All Charges	26	17.8

**TABLE 2B.**  
**CASE DISPOSITIONS AND CASE OUTCOMES (FY 2016)**

	n	%
FY 2016 Total Cases	768	

Type of Court-Martial		
General Court-Martial	399	81.1
Special Court-Martial	65	13.2
Summary Court-Martial	28	5.7
Not Applicable	276	
Type of Trial Forum		
Military Judge	249	50.6
Panel of Military Members	215	43.7
Summary Court-Martial Officer	28	5.7
Not Applicable/Unknown	276	
Article 32 Hearing Held		
Yes	496	64.6
Waived	133	17.3
No/Not Applicable	139	18.1
Accused Charged with Penetrative Offense		
Convicted of Penetrative Offense	106	18.3
Convicted of Sexual Contact Offense	24	4.1
Convicted of Non-Sex Offense	104	18.0
Alternative Disposition	98	16.9

APPENDIX I. DEMOGRAPHIC AND ADJUDICATION DATA OF SEXUAL OFFENSES  
RECORDED IN THE DAC-IPAD CASE ADJUDICATION DATABASE

Acquitted of All Charges	141	24.4
Dismissed Without Judicial Action	106	18.3
<i>(After Article 32 Hearing)</i>	76	71.7
<b>Accused Charged with Sexual Contact Offense</b>	<b>189</b>	
Convicted of Sexual Contact Offense	29	15.3
Convicted of Non-Sex Offense	72	38.1
Alternative Disposition	49	25.9
Acquitted of All Charges	16	8.5
Dismissed Without Judicial Action	23	12.2
<i>(After Article 32 Hearing)</i>	7	30.4
<b>Outcomes for Cases Referred to Trial</b>		
<b>Accused Charged with Penetrative Offense</b>	<b>375</b>	
Convicted of Penetrative Offense	106	28.3
Convicted of Sexual Contact Offense	24	6.4
Convicted of Non-Sex Offense	104	27.7
Acquitted of All Charges	141	37.6
<b>Accused Charged with Sexual Contact Offense</b>	<b>117</b>	
Convicted of Sexual Contact Offense	29	24.8
Convicted of Non-Sex Offense	72	61.5
Acquitted of All Charges	16	13.7
<b>Outcomes for Contested Trials</b>		
<b>Accused Charged with Penetrative Offense</b>	<b>334</b>	
Convicted of Penetrative Offense	80	24.0
Convicted of Sexual Contact Offense	9	2.7
Convicted of Non-Sex Offense	104	31.1
Acquitted of All Charges	141	42.2
<b>Accused Charged with Sexual Contact Offense</b>	<b>106</b>	
Convicted of Sexual Contact Offense	18	17.0
Convicted of Non-Sex Offense	72	67.9
Acquitted of All Charges	16	15.1

**TABLE 2C.  
CASE DISPOSITIONS AND CASE OUTCOMES (FY 2017)**

	n	%
FY 2017 Total Cases	658	
<b>Type of Court-Martial</b>		
General Court-Martial	328	76.6
Special Court-Martial	77	18.0
Summary Court-Martial	23	5.4
Not Applicable	230	
<b>Type of Trial Forum</b>		
Military Judge	232	54.2
Panel of Military Members	173	40.4
Summary Court-Martial Officer	23	5.4
Not Applicable/Unknown	230	
<b>Article 32 Hearing Held</b>		
Yes	400	60.8
Waived	115	17.5
No/Not Applicable	143	21.7
<b>Accused Charged with Penetrative Offense</b>		
Convicted of Penetrative Offense	98	20.2
Convicted of Sexual Contact Offense	16	3.3
Convicted of Non-Sex Offense	101	20.8
Alternative Disposition	95	19.6
Acquitted of All Charges	97	20.0
Dismissed Without Judicial Action	78	16.1
<i>(After Article 32 Hearing)</i>	62	79.5
<b>Accused Charged with Sexual Contact Offense</b>		
Convicted of Sexual Contact Offense	23	13.3
Convicted of Non-Sex Offense	71	41.0
Alternative Disposition	44	25.4
Acquitted of All Charges	22	12.7
Dismissed Without Judicial Action	13	7.5
<i>(After Article 32 Hearing)</i>	7	53.8
<b>Outcomes for Cases Referred to Trial</b>		
<b>Accused Charged with Penetrative Offense</b>		
Convicted of Penetrative Offense	98	31.4
Convicted of Sexual Contact Offense	16	5.1
Convicted of Non-Sex Offense	101	32.4
Acquitted of All Charges	97	31.1

APPENDIX I. DEMOGRAPHIC AND ADJUDICATION DATA OF SEXUAL OFFENSES  
RECORDED IN THE DAC-IPAD CASE ADJUDICATION DATABASE

Accused Charged with Sexual Contact Offense	116	
Convicted of Sexual Contact Offense	23	19.8
Convicted of Non-Sex Offense	71	61.2
Acquitted of All Charges	22	19.0
Outcomes for Contested Trials		
Accused Charged with Penetrative Offense	273	
Convicted of Penetrative Offense	68	24.9
Convicted of Sexual Contact Offense	7	2.6
Convicted of Non-Sex Offense	101	37.0
Acquitted of All Charges	97	35.5
Accused Charged with Sexual Contact Offense	104	
Convicted of Sexual Contact Offense	11	10.6
Convicted of Non-Sex Offense	71	68.3
Acquitted of All Charges	22	21.2

**TABLE 3A.  
ARTICLE 32 WAIVER (FY 2015)**

	n	%
FY 2015 Total Cases	780	
Art. 32 Held	540	90.3
Art. 32 Waived	58	9.7
Waived Without Pretrial Agreement		
Waived Without Pretrial Agreement	30	51.7
Waived When Involving Contact Offense	11	19.0
Waived When Involving Penetrative Offense	47	81.0
Conviction Rate When Art. 32 Waived	46	79.3

**TABLE 3B.  
ARTICLE 32 WAIVER (FY 2016)**

	n	%
FY 2016 Total Cases	768	
Art. 32 Held	496	78.9
Art. 32 Waived	133	21.1
Waived Without Pretrial Agreement		
Waived Without Pretrial Agreement	92	69.2
Waived When Involving Contact Offense	21	15.8
Waived When Involving Penetrative Offense	112	84.2
Conviction Rate When Art. 32 Waived	62	46.6

**TABLE 3C.  
ARTICLE 32 WAIVER (FY 2017)**

	n	%
<b>FY 2017 Total Cases</b>	<b>658</b>	
Art. 32 Held	400	77.7
Art. 32 Waived	115	22.3
<b>Waived Without Pretrial Agreement</b>		
Waived Without Pretrial Agreement	66	57.4
Waived When Involving Contact Offense	19	16.5
Waived When Involving Penetrative Offense	96	83.5
Conviction Rate When Art. 32 Waived	71	61.7

**TABLE 4A.  
TYPE OF TRIAL BY OFFENSE TYPE, SERVICE, AND RANK OF ACCUSED (FY 2015)**

	General Court-Martial		Special Court-Martial		Summary Court-Martial	
	n	%	n	%	n	%
<b>Most Serious Type of Offense Charged</b>						
Accused Charged with Penetrative Offense	374	94.2	13	3.3	10	2.5
Accused Charged with Contact Offense	64	40.0	64	40.0	32	20.0
<b>Military Service</b>						
Army	221	88.8	17	6.8	11	4.4
Marine Corps	49	65.3	13	17.3	13	17.3
Navy	59	62.8	27	28.7	8	8.5
Air Force	98	86.7	13	11.5	2	1.8
Coast Guard	11	42.3	7	26.9	8	30.8
<b>Rank of Accused</b>						
Officer	45	100.0	0	0.0	0	0.0
Enlisted	393	76.8	77	15.0	42	8.2

**TABLE 4B.**  
**TYPE OF TRIAL BY OFFENSE TYPE, SERVICE, AND RANK OF ACCUSED (FY 2016)**

	General Court-Martial		Special Court-Martial		Summary Court-Martial	
	n	%	n	%	n	%
<b>Most Serious Type of Offense Charged</b>						
Accused Charged with Penetrative Offense	348	92.8	16	4.3	11	2.9
Accused Charged with Contact Offense	51	43.6	49	41.9	17	14.5
<b>Military Service</b>						
Army	187	92.6	11	5.4	4	2.0
Marine Corps	50	60.2	23	27.7	10	12.0
Navy	52	62.7	22	26.5	9	10.8
Air Force	99	93.4	6	5.7	1	0.9
Coast Guard	11	61.1	3	16.7	4	22.2
<b>Rank of Accused</b>						
Officer	33	97.1	1	2.9	0	0.0
Enlisted	366	79.9	64	14.0	28	6.1

**TABLE 4C.**  
**TYPE OF TRIAL BY OFFENSE TYPE, SERVICE, AND RANK OF ACCUSED (FY 2017)**

	General Court-Martial		Special Court-Martial		Summary Court-Martial	
	n	%	n	%	n	%
<b>Most Serious Type of Offense Charged</b>						
Accused Charged with Penetrative Offense	289	92.6	13	4.2	10	3.2
Accused Charged with Contact Offense	39	33.6	64	55.2	13	11.2
<b>Military Service</b>						
Army	166	89.2	11	5.9	9	4.8
Marine Corps	27	50.0	21	38.9	6	11.1
Navy	54	61.4	30	34.1	4	4.5
Air Force	74	88.1	10	11.9	0	0.0
Coast Guard	7	43.8	5	31.3	4	25.0
<b>Rank of Accused</b>						
Officer	36	100.0	0	0.0	0	0.0
Enlisted	292	74.5	77	19.6	23	5.9

**TABLE 5A.  
OUTCOMES OF SEXUAL OFFENSES BY MILITARY SERVICE OF ACCUSED (FY 2015)**

	Convicted of Penetrative Offense		Convicted of Sexual Contact Offense		Convicted of Non-Sex Offense		Acquitted of All Charges		Alternative Disposition		Dismissed Without Judicial Action	
	n	%	n	%	n	%	n	%	n	%	n	%
<b>Accused Charged with Penetrative Offense(s) (n = 558)</b>												
Army n = 264	88	33.3	4	1.5	60	22.7	44	16.7	50	18.9	18	6.8
Marine Corps n = 72	11	15.3	5	6.9	21	29.2	14	19.4	4	5.6	17	23.6
Navy n = 67	18	26.9	1	1.5	14	20.9	18	26.9	3	4.5	13	19.4
Air Force n = 136	25	18.4	3	2.2	17	12.5	39	28.7	21	15.4	31	22.8
Coast Guard n = 19	4	21.1	0	0.0	10	52.6	1	5.3	2	10.5	2	10.5

<b>Accused Charged with Contact Offense(s) (n = 222)</b>												
Army n = 83			20	24.1	25	30.1	8	9.6	27	32.5	3	3.6
Marine Corps n = 33			2	6.1	22	66.7	0	0.0	3	9.1	6	18.2
Navy n = 55			12	21.8	21	38.2	10	18.2	8	14.5	4	7.3
Air Force n = 38			9	23.7	12	31.6	8	21.1	8	21.1	1	2.6
Coast Guard n = 13			1	7.7	10	76.9	0	0.0	1	7.7	1	7.7

**TABLE 5B.**  
**OUTCOMES OF SEXUAL OFFENSES BY MILITARY SERVICE OF ACCUSED (FY 2016)**

	Convicted of Penetrative Offense		Convicted of Sexual Contact Offense		Convicted of Non-Sex Offense		Acquitted of All Charges		Alternative Disposition		Dismissed Without Judicial Action	
	n	%	n	%	n	%	n	%	n	%	n	%
<b>Accused Charged with Penetrative Offense(s) (n = 579)</b>												
Army n = 222	58	26.1	15	6.8	43	19.4	50	22.5	30	13.5	26	11.7
Marine Corps n = 85	13	15.3	4	4.7	23	27.1	14	16.5	13	15.3	18	21.2
Navy n = 78	15	19.2	2	2.6	18	23.1	18	23.1	11	14.1	14	17.9
Air Force n = 180	17	9.4	3	1.7	13	7.2	57	31.7	43	23.9	47	26.1
Coast Guard n = 14	3	21.4	0	0.0	7	50.0	2	14.3	1	7.1	1	7.1

<b>Accused Charged with Contact Offense(s) (n = 189)</b>												
Army n = 56			12	21.4	18	32.1	6	10.7	16	28.6	4	7.1
Marine Corps n = 38			3	7.9	24	63.2	2	5.3	4	10.5	5	13.2
Navy n = 48			9	18.8	17	35.4	4	8.3	8	16.7	10	20.8
Air Force n = 38			3	7.9	9	23.7	4	10.5	18	47.4	4	10.5
Coast Guard n = 9			2	22.2	4	44.4	0	0.0	3	33.3	0	0.0

**TABLE 5C.  
OUTCOMES OF SEXUAL OFFENSES BY MILITARY SERVICE OF ACCUSED (FY 2017)**

	Convicted of Penetrative Offense		Convicted of Sexual Contact Offense		Convicted of Non-Sex Offense		Acquitted of All Charges		Alternative Disposition		Dismissed Without Judicial Action	
	n	%	n	%	n	%	n	%	n	%	n	%
<b>Accused Charged with Penetrative Offense(s) (n = 485)</b>												
Army n = 223	56	25.1	10	4.5	48	21.5	33	14.8	53	23.8	23	10.3
Marine Corps n = 44	8	18.2	1	2.3	19	43.2	8	18.2	2	4.5	6	13.6
Navy n = 73	12	16.4	5	6.8	17	23.3	19	26.0	9	12.3	11	15.1
Air Force n = 134	20	14.9	0	0.0	12	9.0	36	26.9	29	21.6	37	27.6
Coast Guard n = 11	2	18.2	0	0.0	5	45.5	1	9.1	2	18.2	1	9.1
<b>Accused Charged with Contact Offense(s) (n = 173)</b>												
Army n = 55			9	16.4	25	45.5	5	9.1	12	21.8	4	7.3
Marine Corps n = 29			5	17.2	8	27.6	5	17.2	6	20.7	5	17.2
Navy n = 52			4	7.7	27	51.9	4	7.7	16	30.8	1	1.9
Air Force n = 28			3	10.7	7	25.0	6	21.4	9	32.1	3	10.7
Coast Guard n = 9			2	22.2	4	44.4	2	22.2	1	11.1	0	0.0

**TABLE 6A.**  
**OUTCOMES OF SEXUAL OFFENSES BY RANK OF ACCUSED (FY 2015)**

	Convicted of Penetrative Offense		Convicted of Sexual Contact Offense		Convicted of Non-Sex Offense		Acquitted of All Charges		Alternative Disposition		Dismissed Without Judicial Action	
	n	%	n	%	n	%	n	%	n	%	n	%
<b>Accused Charged with Penetrative Offense(s) (n = 558)</b>												
Officer n = 42	13	31.0	2	4.8	13	31.0	6	14.3	1	2.4	7	16.7
Enlisted n = 516	133	25.8	11	2.1	109	21.1	110	21.3	79	15.3	74	14.3
<b>Accused Charged with Contact Offense(s) (n = 222)</b>												
Officer n = 16			5	31.3	5	31.3	1	6.3	4	25.0	1	6.3
Enlisted n = 206			39	18.9	85	41.3	25	12.1	43	20.9	14	6.8

**TABLE 6B.**  
**OUTCOMES OF SEXUAL OFFENSES BY RANK OF ACCUSED (FY 2016)**

	Convicted of Penetrative Offense		Convicted of Sexual Contact Offense		Convicted of Non-Sex Offense		Acquitted of All Charges		Alternative Disposition		Dismissed Without Judicial Action	
	n	%	n	%	n	%	n	%	n	%	n	%
<b>Accused Charged with Penetrative Offense(s) (n = 559)</b>												
Officer n = 34	5	14.7	1	2.9	11	32.4	11	32.4	2	5.9	4	11.8
Enlisted n = 545	101	18.5	23	4.2	93	17.1	130	23.9	96	17.6	102	18.7
<b>Accused Charged with Contact Offense(s) (n = 179)</b>												
Officer n = 11			2	18.2	3	27.3	1	9.1	3	27.3	2	18.2
Enlisted n = 178			27	15.2	69	38.8	15	8.4	46	25.8	21	11.8

**TABLE 6C.  
OUTCOMES OF SEXUAL OFFENSES BY RANK OF ACCUSED (FY 2017)**

	Convicted of Penetrative Offense		Convicted of Sexual Contact Offense		Convicted of Non-Sex Offense		Acquitted of All Charges		Alternative Disposition		Dismissed Without Judicial Action	
	n	%	n	%	n	%	n	%	n	%	n	%
<b>Accused Charged with Penetrative Offense(s) (n = 485)</b>												
Officer n = 41	10	24.4	2	4.9	8	19.5	10	24.4	4	9.8	7	17.1
Enlisted n = 444	88	19.8	14	3.2	93	20.9	87	19.6	91	20.5	71	16.0
<b>Accused Charged with Contact Offense(s) (n = 173)</b>												
Officer n = 10			0	0.0	5	50.0	1	10.0	4	40.0	0	0.0
Enlisted n = 163			23	14.1	66	40.5	21	12.9	40	24.5	13	8.0

**TABLE 7A.**  
**OUTCOMES OF SEXUAL OFFENSES BY SEX AND STATUS OF VICTIM (FY 2015)**

	Convicted of Penetrative Offense		Convicted of Sexual Contact Offense		Convicted of Non-Sex Offense		Acquitted of All Charges		Alternative Disposition		Dismissed Without Judicial Action	
	n	%	n	%	n	%	n	%	n	%	n	%
<b>Accused Charged with Penetrative Offense(s) (n = 558)</b>												
<b>Victim Sex</b>												
All Females n = 521	132	25.3	11	2.1	116	22.3	108	20.7	75	14.4	79	15.2
All Males n = 36	14	38.9	2	5.6	5	13.9	8	22.2	5	13.9	2	5.6
Females & Males n = 1	0	0.0	0	0.0	1	100.0	0	0.0	0	0.0	0	0.0
<b>Victim Status</b>												
All Military n = 351	81	23.1	5	1.4	73	20.8	81	23.1	57	16.2	54	15.4
All Civilian n = 184	56	30.4	7	3.8	42	22.8	33	17.9	21	11.4	25	13.6
Military & Civilian n = 23	9	39.1	1	4.3	7	30.4	2	8.7	2	8.7	2	8.7
<b>Accused Charged with Contact Offense(s) (n = 225)</b>												
<b>Victim Sex</b>												
All Females n = 187			36	19.3	74	39.6	22	11.8	41	21.9	14	7.5
All Males n = 33			8	24.2	15	45.5	3	9.1	6	18.2	1	3.0
Females & Males n = 2			0	0.0	1	50.0	1	50.0	0	0.0	0	0.0
<b>Victim Status</b>												
All Military n = 175			33	18.9	70	40.0	24	13.7	39	22.3	9	5.1
All Civilian n = 39			8	20.5	15	38.5	2	5.1	8	20.5	6	15.4
Military & Civilian n = 8			3	37.5	5	62.5	0	0.0	0	0.0	0	0.0

**TABLE 7B.**  
**OUTCOMES OF SEXUAL OFFENSES BY SEX AND STATUS OF VICTIM (FY 2016)**

	Convicted of Penetrative Offense		Convicted of Sexual Contact Offense		Convicted of Non-Sex Offense		Acquitted of All Charges		Alternative Disposition		Dismissed Without Judicial Action	
	n	%	n	%	n	%	n	%	n	%	n	%
<b>Accused Charged with Penetrative Offense(s) (n = 579)</b>												
<b>Victim Sex</b>												
All Females n = 559	99	17.7	19	3.4	102	18.2	138	24.7	97	17.4	104	18.6
All Males n = 20	7	35.0	5	25.0	2	10.0	3	15.0	1	5.0	2	10.0
Females & Males n = 0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
<b>Victim Status</b>												
All Military n = 327	57	17.4	16	4.9	49	15.0	83	25.4	64	19.6	58	17.7
All Civilian n = 227	44	19.4	6	2.6	50	22.0	51	22.5	31	13.7	45	19.8
Military & Civilian n = 25	5	20.0	2	8.0	5	20.0	7	28.0	3	12.0	3	12.0
<b>Accused Charged with Contact Offense(s) (n = 189)</b>												
<b>Victim Sex</b>												
All Females n = 162			24	14.8	66	40.7	11	6.8	39	24.1	22	13.6
All Males n = 24			4	16.7	6	25.0	5	20.8	8	33.3	1	4.2
Females & Males n = 3			1	33.3	0	0.0	0	0.0	2	66.7	0	0.0
<b>Victim Status</b>												
All Military n = 142			23	16.2	53	37.3	12	8.5	36	25.4	18	12.7
All Civilian n = 41			5	12.2	15	41.5	4	9.8	10	24.4	5	12.2
Military & Civilian n = 6			1	16.7	2	33.3	0	0.0	3	50.0	0	0.0

**TABLE 7C.**  
**OUTCOMES OF SEXUAL OFFENSES BY SEX AND STATUS OF VICTIM (FY 2017)**

	Convicted of Penetrative Offense		Convicted of Sexual Contact Offense		Convicted of Non-Sex Offense		Acquitted of All Charges		Alternative Disposition		Dismissed Without Judicial Action	
	n	%	n	%	n	%	n	%	n	%	n	%
<b>Accused Charged with Penetrative Offense(s) (n = 485)</b>												
<b>Victim Sex</b>												
All Females n = 461	92	20.0	15	3.3	96	20.8	94	20.4	89	19.3	75	16.3
All Males n = 20	3	15.0	1	5.0	4	20.0	3	15.0	6	30.0	3	15.0
Females & Males n = 4	3	75.0	0	0.0	1	25.0	0	0.0	0	0.0	0	0.0
<b>Victim Status</b>												
All Military n = 268	48	17.9	12	4.5	47	17.5	58	21.6	59	22.0	44	16.4
All Civilian n = 195	42	21.5	1	0.5	53	27.2	36	18.5	32	16.4	31	15.9
Military & Civilian n = 22	8	36.4	3	13.6	1	4.5	3	13.6	4	18.2	3	13.6
<b>Accused Charged with Contact Offense(s) (n = 173)</b>												
<b>Victim Sex</b>												
All Females n = 152			21	13.8	65	42.8	21	13.8	34	22.4	11	7.2
All Males n = 20			2	10.0	6	30.0	1	5.0	9	45.0	2	10.0
Females & Males n = 1			0	0.0	0	0.0	0	0.0	1	100.0	0	0.0
<b>Victim Status</b>												
All Military n = 132			20	15.2	53	40.2	16	12.1	34	25.8	9	6.8
All Civilian n = 36			2	5.6	16	44.4	6	16.7	8	22.2	4	11.1
Military & Civilian n = 5			1	20.0	2	40.0	0	0.0	2	40.0	0	0.0

**TABLE 8A.**  
**OUTCOMES OF SEXUAL OFFENSES BY RELATIONSHIP BETWEEN ACCUSED AND VICTIM (FY 2015)**

	Convicted of Penetrative Offense		Convicted of Sexual Contact Offense		Convicted of Non-Sex Offense		Acquitted of All Charges		Alternative Disposition		Dismissed Without Judicial Action	
	n	%	n	%	n	%	n	%	n	%	n	%
<b>Accused Charged with Penetrative Offense(s) (n = 558)</b>												
Spouse or Intimate Partner n = 110	26	23.6	2	1.8	28	25.5	25	22.7	7	6.4	22	20.0
Other Relationship n = 448	120	26.8	11	2.5	94	21.0	91	20.3	73	16.3	59	13.2
<b>Accused Charged with Contact Offense(s) (n = 222)</b>												
Spouse or Intimate Partner n = 7			2	28.6	2	28.6	1	14.3	1	14.3	1	14.3
Other Relationship n = 215			42	19.5	88	40.9	25	11.6	46	21.4	14	6.5

**TABLE 8B.**  
**OUTCOMES OF SEXUAL OFFENSES BY RELATIONSHIP BETWEEN ACCUSED AND VICTIM (FY 2016)**

	Convicted of Penetrative Offense		Convicted of Sexual Contact Offense		Convicted of Non-Sex Offense		Acquitted of All Charges		Alternative Disposition		Dismissed Without Judicial Action	
	n	%	n	%	n	%	n	%	n	%	n	%
<b>Accused Charged with Penetrative Offense(s) (n = 579)</b>												
Spouse or Intimate Partner n = 168	29	17.3	1	0.6	40	23.8	33	19.6	23	13.7	42	25.0
Other Relationship n = 411	77	18.7	23	5.6	64	15.6	108	26.3	75	18.2	64	15.6
<b>Accused Charged with Contact Offense(s) (n = 189)</b>												
Spouse or Intimate Partner n = 6			0	0.0	3	50.0	0	0.0	2	33.3	1	16.7
Other Relationship n = 183			29	15.8	69	37.7	16	8.7	47	25.7	22	12.0

**TABLE 8C.  
OUTCOMES OF SEXUAL OFFENSES BY RELATIONSHIP BETWEEN ACCUSED AND VICTIM (FY 2017)**

	Convicted of Penetrative Offense		Convicted of Sexual Contact Offense		Convicted of Non-Sex Offense		Acquitted of All Charges		Alternative Disposition		Dismissed Without Judicial Action	
	n	%	n	%	n	%	n	%	n	%	n	%
<b>Accused Charged with Penetrative Offense(s) (n = 485)</b>												
Spouse or Intimate Partner n = 109	19	17.4	0	0.0	39	35.8	18	16.5	13	11.9	20	18.3
Other Relationship n = 376	79	21.0	16	4.3	62	16.5	79	21.0	82	21.8	58	15.4

<b>Accused Charged with Contact Offense(s) (n = 173)</b>												
Spouse or Intimate Partner n = 3			0	0.0	2	66.7	0	0.0	0	0.0	1	33.3
Other Relationship n = 170			23	13.5	69	40.6	44	25.9	22	12.9	12	7.1

**TABLE 9A.  
OUTCOMES OF SEXUAL OFFENSES BY ACCUSED'S LOCATION (FY 2015)**

	Convicted of Penetrative Offense		Convicted of Sexual Contact Offense		Convicted of Non-Sex Offense		Acquitted of All Charges		Alternative Disposition		Dismissed Without Judicial Action	
	n	%	n	%	n	%	n	%	n	%	n	%
<b>Accused Charged with Penetrative Offense(s) (n = 558)</b>												
CONUS n = 386	101	26.2	8	2.1	75	19.4	90	23.3	53	13.7	59	15.3
OCONUS n = 142	38	26.8	5	3.5	35	24.6	20	14.1	27	19.0	17	12.0
Vessel n = 30	7	23.3	0	0.0	12	40.0	6	20.0	0	0.0	5	16.7

<b>Accused Charged with Contact Offense(s) (n = 222)</b>												
CONUS n = 146			29	19.9	56	38.4	22	15.1	28	19.2	11	7.5
OCONUS n = 53			11	20.8	19	35.8	2	3.8	17	32.1	4	7.5
Vessel n = 23			4	17.4	15	65.2	2	8.7	2	8.7	0	0.0

**TABLE 9B.  
OUTCOMES OF SEXUAL OFFENSES BY ACCUSED'S LOCATION (FY 2016)**

	Convicted of Penetrative Offense		Convicted of Sexual Contact Offense		Convicted of Non-Sex Offense		Acquitted of All Charges		Alternative Disposition		Dismissed Without Judicial Action	
	n	%	n	%	n	%	n	%	n	%	n	%
<b>Accused Charged with Penetrative Offense(s) (n = 579)</b>												
CONUS n = 421	77	18.3	18	4.3	70	16.6	103	24.5	71	16.9	82	19.5
OCONUS n = 127	25	19.7	4	3.1	26	20.5	31	24.4	22	17.3	19	15.0
Vessel n = 31	4	12.9	2	6.5	8	25.8	7	22.6	5	16.1	5	16.1
<b>Accused Charged with Contact Offense(s) (n = 189)</b>												
CONUS n = 121			21	17.4	47	38.8	9	7.4	31	25.6	13	10.7
OCONUS n = 47			3	6.4	16	34.0	5	10.6	16	34.0	7	14.9
Vessel n = 21			5	23.8	9	42.9	2	9.5	2	9.5	3	14.3

**TABLE 9C.  
OUTCOMES OF SEXUAL OFFENSES BY ACCUSED'S LOCATION (FY 2017)**

	Convicted of Penetrative Offense		Convicted of Sexual Contact Offense		Convicted of Non-Sex Offense		Acquitted of All Charges		Alternative Disposition		Dismissed Without Judicial Action	
	n	%	n	%	n	%	n	%	n	%	n	%
<b>Accused Charged with Penetrative Offense(s) (n = 485)</b>												
CONUS n = 353	76	21.5	11	3.1	68	19.3	61	17.3	73	20.7	64	18.1
OCONUS n = 102	18	17.6	3	2.9	25	24.5	27	26.5	19	18.6	10	9.8
Vessel n = 30	4	13.3	2	6.7	8	26.7	9	30.0	3	10.0	4	13.3
<b>Accused Charged with Contact Offense(s) (n = 173)</b>												
CONUS n = 124			14	11.3	46	37.1	18	14.5	36	29.0	10	8.1
OCONUS n = 24			7	29.2	8	33.3	3	12.5	4	16.7	2	8.3
Vessel n = 25			2	8.0	17	68.0	1	4.0	4	16.0	1	4.0

**TABLE 10A.**  
**OUTCOMES OF SEXUAL OFFENSES BY TYPE OF TRIAL FORUM (FY 2015)**

	Convicted of Penetrative Offense		Convicted of Sexual Contact Offense		Convicted of Non-Sex Offense		Acquitted of All Charges	
	n	%	n	%	n	%	n	%
<b>Accused Charged with Penetrative Offense(s) and Case Referred to Trial (n = 387)<sup>a</sup></b>								
Adjudicated by Military Judge n = 215	84	39.1	10	4.7	72	33.5	49	22.8
Adjudicated by Panel of Members n = 171	61	35.7	3	1.8	41	24.0	66	38.6
<b>Accused Charged with Contact Offense(s) and Case Referred to Trial (n = 128)</b>								
Adjudicated by Military Judge n = 80			20	25.0	53	66.3	7	8.8
Adjudicated by Panel of Members n = 48			15	31.3	15	31.3	18	37.5

<sup>a</sup> In one case it could not be determined whether adjudication was by a military judge or by a panel of members.

**TABLE 10B.**  
**OUTCOMES OF SEXUAL OFFENSES BY TYPE OF TRIAL FORUM (FY 2016)**

	Convicted of Penetrative Offense		Convicted of Sexual Contact Offense		Convicted of Non-Sex Offense		Acquitted of All Charges	
	n	%	n	%	n	%	n	%
<b>Accused Charged with Penetrative Offense(s) and Case Referred to Trial (n = 364)</b>								
Adjudicated by Military Judge n = 180	54	30.0	16	8.9	69	38.3	41	22.8
Adjudicated by Panel of Members n = 184	52	28.3	6	3.3	26	14.1	100	54.3
<b>Accused Charged with Contact Offense(s) and Case Referred to Trial (n = 100)</b>								
Adjudicated by Military Judge n = 69			12	17.4	54	78.3	3	4.3
Adjudicated by Panel of Members n = 31			11	35.5	7	22.6	13	41.9

**TABLE 10C.  
OUTCOMES OF SEXUAL OFFENSES BY TYPE OF TRIAL FORUM (FY 2017)**

	Convicted of Penetrative Offense		Convicted of Sexual Contact Offense		Convicted of Non-Sex Offense		Acquitted of All Charges	
	n	%	n	%	n	%	n	%
<b>Accused Charged with Penetrative Offense(s) and Case Referred to Trial (n = 302)</b>								
Adjudicated by Military Judge n = 166	54	32.5	10	6.0	68	41.0	34	20.5
Adjudicated by Panel of Members n = 136	44	32.4	4	2.9	25	18.4	63	46.3
<b>Accused Charged with Contact Offense(s) and Case Referred to Trial (n = 103)</b>								
Adjudicated by Military Judge n = 66			12	18.2	52	78.8	2	3.0
Adjudicated by Panel of Members n = 37			8	21.6	10	27.0	19	51.4

**TABLE 11A.  
OUTCOMES OF SEXUAL OFFENSES BY TYPE OF TRIAL FORUM FOR  
CASES IN WHICH THE ACCUSED PLED NOT GUILTY (FY 2015)**

	Convicted of Penetrative Offense		Convicted of Sexual Contact Offense		Convicted of Non-Sex Offense		Acquitted of All Charges	
	n	%	n	%	n	%	n	%
<b>Accused Charged with Penetrative Offense(s), Referred to Trial and Pled Not Guilty to Sexual Assault Offense (n = 336)<sup>a</sup></b>								
Adjudicated by Military Judge n = 166	42	25.3	3	1.8	72	43.4	49	29.5
Adjudicated by Panel of Members n = 169	59	34.9	3	1.8	41	24.3	66	39.1
<b>Accused Charged with Contact Offense(s), Referred to Trial and Pled Not Guilty to Sexual Assault Offense (n = 122)</b>								
Adjudicated by Military Judge n = 74			14	18.9	53	71.6	7	9.5
Adjudicated by Panel of Members n = 48			15	31.3	15	31.3	18	37.5

<sup>a</sup> In one case it could not be determined whether adjudication was by a military judge or by a panel of members.

**TABLE 11B.**  
**OUTCOMES OF SEXUAL OFFENSES BY TYPE OF TRIAL FORUM FOR**  
**CASES IN WHICH THE ACCUSED PLED NOT GUILTY (FY 2016)**

	Convicted of Penetrative Offense		Convicted of Sexual Contact Offense		Convicted of Non-Sex Offense		Acquitted of All Charges	
	n	%	n	%	n	%	n	%
<b>Accused Charged with Penetrative Offense(s), Referred to Trial and Pled Not Guilty to Sexual Assault Offense (n = 325)</b>								
Adjudicated by Military Judge n = 141	28	19.9	3	2.1	69	48.9	41	29.1
Adjudicated by Panel of Members n = 184	52	28.3	6	3.3	26	14.1	100	54.3
<b>Accused Charged with Contact Offense(s), Referred to Trial and Pled Not Guilty to Sexual Assault Offense (n = 91)</b>								
Adjudicated by Military Judge n = 60			3	5.0	54	90.0	3	5.0
Adjudicated by Panel of Members n = 31			11	35.5	7	22.6	13	41.9

**TABLE 11C.**  
**OUTCOMES OF SEXUAL OFFENSES BY TYPE OF TRIAL FORUM FOR**  
**CASES IN WHICH THE ACCUSED PLED NOT GUILTY (FY 2017)**

	Convicted of Penetrative Offense		Convicted of Sexual Contact Offense		Convicted of Non-Sex Offense		Acquitted of All Charges	
	n	%	n	%	n	%	n	%
<b>Accused Charged with Penetrative Offense(s), Referred to Trial and Pled Not Guilty to Sexual Assault Offense (n = 265)</b>								
Adjudicated by Military Judge n = 130	25	19.2	3	2.3	68	52.3	34	26.2
Adjudicated by Panel of Members n = 135	43	31.9	4	3.0	25	18.5	63	46.7
<b>Accused Charged with Contact Offense(s), Referred to Trial and Pled Not Guilty to Sexual Assault Offense (n = 93)</b>								
Adjudicated by Military Judge n = 56			2	3.6	52	92.9	2	3.6
Adjudicated by Panel of Members n = 37			8	21.6	10	27.0	19	51.4

**TABLE 12A.**  
**VARIABLES ASSOCIATED WITH ADJUDGED SENTENCE OF CONFINEMENT (FY 2016)**

	No Confinement		Confinement	
	n	%	n	%
<b>Military Service of Accused (NS)</b>				
Army	28	19.2	118	80.8
Marine Corps	15	22.4	52	77.6
Navy	15	24.6	46	75.4
Air Force	6	13.3	39	86.7
Coast Guard	5	31.3	11	68.8
<b>Rank of Accused (NS)</b>				
Officer	5	22.7	17	77.3
Enlisted	64	20.4	249	79.6
<b>Sex of Victim (NS)<sup>a</sup></b>				
All Females	66	21.3	244	78.7
All Males	3	12.5	21	87.5
Females and Males	0	0.0	1	100.0
<b>Status of Victim (NS)<sup>b</sup></b>				
All Military	49	24.7	149	75.3
All Civilian	18	14.8	104	85.2
Military and Civilian	2	13.3	13	86.7
<b>Relationship Between Accused and Victim (<math>p &lt; .05</math>)</b>				
Spouse or Intimate Partner	7	9.6	66	90.4
Other Relationship	62	23.7	200	76.3
<b>Conviction Offense (<math>p &lt; .05</math>)</b>				
Penetrative Offense	4	3.8	102	96.2
Contact Offense	14	26.4	39	73.6
Non-Sexual Assault Offense	51	29.0	125	71.0
<b>Number of Counts Preferred (NS)</b>				
	6.59 (sd = 4.96)		7.87 (sd = 5.92)	
<b>Number of Victims (NS)</b>				
	1.19 (sd = .58)		1.33 (sd = .80)	
<b>Type of Court-Martial (<math>p &lt; .05</math>)</b>				
General Court-Martial	36	14.7	209	85.3
Special Court-Martial	15	24.2	47	75.8
Summary Court-Martial	18	64.3	10	35.7
<b>Type of Trial Forum (<math>p &lt; .05</math>)</b>				
Military Judge	22	10.7	183	89.3
Panel of Military Members	29	28.4	73	71.6
Summary Court-Martial Officer	18	64.3	10	35.7

<sup>a</sup> This non-statistically significant result remains when the “females and males” category is excluded from the analysis.

<sup>b</sup> When the “military and civilian” category is excluded from the analysis, the relationship is significant.

**TABLE 12B.**  
**VARIABLES ASSOCIATED WITH ADJUDGED SENTENCE OF CONFINEMENT (FY 2017)**

	No Confinement		Confinement	
	n	%	n	%
<b>Military Service of Accused (NS)</b>				
Army	31	20.9	117	79.1
Marine Corps	7	17.1	34	82.9
Navy	12	18.5	53	81.5
Air Force	9	21.4	33	78.6
Coast Guard	3	23.1	10	76.9
<b>Rank of Accused (NS)</b>				
Officer	7	28.0	18	72.0
Enlisted	55	19.4	229	80.6
<b>Sex of Victim (<math>p &lt; .05</math>)<sup>a</sup></b>				
All Females	55	19.0	234	81.0
All Males	7	43.8	9	56.3
Females and Males	0	0.0	4	100.0
<b>Status of Victim (<math>p &lt; .05</math>)<sup>b</sup></b>				
All Military	47	26.1	133	73.9
All Civilian	15	13.2	99	86.8
Military and Civilian	0	0.0	15	100.0
<b>Relationship Between Accused and Victim (NS)</b>				
Spouse or Intimate Partner	7	11.7	53	88.3
Other Relationship	55	22.1	194	77.9
<b>Conviction Offense (<math>p &lt; .05</math>)</b>				
Penetrative Offense	5	5.1	93	94.9
Contact Offense	4	10.3	35	89.7
Non-Sexual Assault Offense	53	30.8	119	69.2
Number of Counts Preferred ( $p < .05$ )	5.97 (sd = 3.73)		7.48 (sd = 5.83)	
Number of Victims ( $p < .05$ )	1.10 (sd = .35)		1.36 (sd = .88)	
<b>Type of Court-Martial (<math>p &lt; .05</math>)</b>				
General Court-Martial	36	16.0	189	84.0
Special Court-Martial	9	14.5	53	85.5
Summary Court-Martial	17	77.3	5	22.7
<b>Type of Trial Forum (<math>p &lt; .05</math>)</b>				
Military Judge	15	7.7	181	92.3
Panel of Military Members	30	33.0	61	67.0
Summary Court-Martial Officer	17	77.3	5	22.7

<sup>a</sup> The relationship is statistically significant when the “male and female” category is excluded from the analysis.

<sup>b</sup> The relationship is statistically significant when the “military and civilian” category is excluded from the analysis.

**TABLE 13A.**  
**VARIABLES ASSOCIATED WITH ADJUDGED SENTENCE OF PUNITIVE SEPARATION (FY 2016)**

	No Separation		Separation	
	n	%	n	%
<b>Military Service of Accused (NS)</b>				
Army	43	29.5	103	70.5
Marine Corps	26	38.8	41	61.2
Navy	28	45.9	33	54.1
Air Force	15	33.3	30	66.7
Coast Guard	8	50.0	8	50.0
<b>Rank of Accused (NS)</b>				
Officer	7	31.8	15	68.2
Enlisted	113	36.1	200	63.9
<b>Sex of Victim (NS)<sup>a</sup></b>				
All Females	114	36.8	196	63.2
All Males	6	25.0	18	75.0
Females and Males	0	0.0	1	100.0
<b>Status of Victim (NS)<sup>b</sup></b>				
All Military	79	39.9	119	60.1
All Civilian	39	32.0	83	68.0
Military and Civilian	2	13.3	13	86.7
<b>Relationship Between Accused and Victim (NS)</b>				
Spouse or Intimate Partner	21	28.8	52	71.2
Other Relationship	99	37.8	163	62.2
<b>Conviction Offense (<math>p &lt; .05</math>)</b>				
Penetrative Offense	3	2.8	103	97.2
Contact Offense	22	41.5	31	58.5
Non-Sexual Assault Offense	95	54.0	81	46.0
<b>Number of Counts Preferred (NS)</b>				
	6.97 (sd = 5.39)		7.96 (sd = 5.93)	
<b>Number of Victims (NS)</b>				
	1.26 (sd = .82)		1.33 (sd = .74)	
<b>Type of Court-Martial (<math>p &lt; .05</math>)<sup>c</sup></b>				
General Court-Martial	59	24.1	186	75.9
Special Court-Martial	33	53.2	29	46.8
Summary Court-Martial	28	100.0	0	0.0
<b>Type of Trial Forum (<math>p &lt; .05</math>)<sup>d</sup></b>				
Military Judge	61	29.8	144	70.2
Panel of Military Members	31	30.4	71	69.6
Summary Court-Martial Officer	28	100.0	0	0.0

<sup>a</sup> This non-statistically significant result remains when the “females and males” category is excluded from the analysis.

<sup>b</sup> This non-statistically significant result remains when the “military and civilian” category is excluded from the analysis.

<sup>c</sup> This pattern remains statistically significant when summary courts-martial are excluded from the analysis.

<sup>d</sup> This pattern is not statistically significant when the summary court-martial officer category is excluded from the analysis.

**TABLE 13B.**  
**VARIABLES ASSOCIATED WITH ADJUDGED SENTENCE OF PUNITIVE SEPARATION (FY 2017)**

	No Separation		Separation	
	n	%	n	%
<b>Military Service of Accused (<math>p &lt; .05</math>)</b>				
Army	46	31.1	102	68.9
Marine Corps	12	29.3	29	70.7
Navy	29	44.6	36	55.4
Air Force	10	23.8	32	76.2
Coast Guard	9	69.2	4	30.8
<b>Rank of Accused (NS)</b>				
Officer	5	20.0	20	80.0
Enlisted	101	35.6	183	64.4
<b>Sex of Victim (<math>p &lt; .05</math>)<sup>a</sup></b>				
All Females	94	32.5	196	67.5
All Males	11	68.8	5	31.1
Females and Males	1	25.0	3	75.0
<b>Status of Victim (<math>p &lt; .05</math>)<sup>b</sup></b>				
All Military	72	40.0	108	60.0
All Civilian	33	28.9	81	71.1
Military and Civilian	1	6.7	14	93.3
<b>Relationship Between Accused and Victim (NS)</b>				
Spouse or Intimate Partner	16	26.7	44	73.3
Other Relationship	90	36.1	159	63.9
<b>Conviction Offense (<math>p &lt; .05</math>)</b>				
Penetrative Offense	0	0.0	98	100.0
Contact Offense	9	23.1	30	76.9
Non-Sexual Assault Offense	97	56.4	75	43.6
Number of Counts Preferred ( $p < .05$ )	6.14 (sd = 4.25)		7.71 (sd = 6.00)	
Number of Victims ( $p < .05$ )	1.13 (sd = .46)		1.40 (sd = .93)	
<b>Type of Court-Martial (<math>p &lt; .05</math>)<sup>c</sup></b>				
General Court-Martial	55	24.4	170	75.6
Special Court-Martial	29	46.8	33	53.2
Summary Court-Martial	22	100.0	0	0.0
<b>Type of Trial Forum (<math>p &lt; .05</math>)<sup>d</sup></b>				
Military Judge	55	28.1	141	71.9
Panel of Military Members	29	31.9	62	68.1
Summary Court-Martial Officer	22	100.0	0	0.0

<sup>a</sup> The relationship is statistically significant when the “male and female” category is excluded from the analysis.

<sup>b</sup> The relationship is statistically significant when the “military and civilian” category is excluded from the analysis.

<sup>c</sup> This relationship is statistically significant when summary courts-martial are excluded from the analysis.

<sup>d</sup> This relationship is not statistically significant when summary court-martial officers are excluded from the analysis.

**TABLE 14A.**  
**VARIABLES ASSOCIATED WITH SENTENCE SEVERITY (FY 2016)**

	Average Sentence Severity <sup>a</sup>
<b>Military Service of Accused (<math>p &lt; .05</math>)</b>	
Army	8.15
Marine Corps	7.73
Navy	5.74
Air Force	6.58
Coast Guard	6.27
<b>Rank of Accused (NS)</b>	
Officer	6.83
Enlisted	7.37
<b>Sex of Victim (NS)</b>	
All Females	7.33
All Males	7.41
<b>Status of Victim (NS)</b>	
All Military	6.92
All Civilian	7.75
Military and Civilian	8.87
<b>Relationship Between Accused and Victim (<math>p &lt; .05</math>)</b>	
Spouse or Intimate Partner	8.3
Other Relationship	7.04
<b>Conviction Offense (<math>p &lt; .05</math>)</b>	
Penetrative Offense	10.56
Contact Offense	6.19
Non-Sexual Assault Offense	5.16
<b>Type of Court-Martial (<math>p &lt; .05</math>)<sup>b</sup></b>	
General Court-Martial	8.4
Special Court-Martial	3.96
<b>Type of Trial Forum (NS)<sup>c</sup></b>	
Military Judge	7.26
Panel of Military Members	8.3

<sup>a</sup> See Table 19A, *Adjudged Sentencing Severity Scale (FY 2016)*, for the scale.

<sup>b</sup> Summary courts-martial are excluded from this analysis because 18 of 28 summary courts-martial did not end in confinement or a punitive separation.

<sup>c</sup> Summary court-martial officer cases are excluded from this analysis because 18 of the 28 summary court-martial officer cases did not end in confinement or a punitive separation.

**TABLE 14B.**  
**VARIABLES ASSOCIATED WITH SENTENCE SEVERITY (FY 2017)**

	Average Sentence Severity <sup>a</sup>
<b>Military Service of Accused (<math>p &lt; .05</math>)</b>	
Army	7.73
Marine Corps	8.15
Navy	6.18
Air Force	9.29
Coast Guard	3.9
<b>Rank of Accused (NS)</b>	
Officer	7.78
Enlisted	7.48
<b>Sex of Victim (NS)</b>	
All Females	7.53
All Males	6.11
Males and Females	9.0
<b>Status of Victim (<math>p &lt; .05</math>)</b>	
All Military	6.82
All Civilian	7.99
Military and Civilian	10.67
<b>Relationship Between Accused and Victim (NS)</b>	
Spouse or Intimate Partner	8.55
Other Relationship	7.23
<b>Conviction Offense (<math>p &lt; .05</math>)</b>	
Penetrative Offense	10.82
Contact Offense	7.08
Non-Sexual Assault Offense	5.03
<b>Type of Court-Martial (<math>p &lt; .05</math>)<sup>b</sup></b>	
General Court-Martial	8.56
Special Court-Martial	4.3
<b>Type of Trial Forum (NS)<sup>c</sup></b>	
Military Judge	7.39
Panel of Military Members	8.38

<sup>a</sup> See Table 19B, *Adjudged Sentencing Severity Scale (FY 2017)*, for the scale.

<sup>b</sup> Summary courts-martial are excluded from this analysis because 17 of 22 summary courts-martial did not end in confinement or a punitive separation.

<sup>c</sup> Summary court-martial officer cases are excluded from this analysis because 17 of the 22 summary court-martial officer cases did not end in confinement or a punitive separation.

**TABLE 15A.**  
**LOGISTIC REGRESSION: VARIABLES RELATED TO CONVICTIONS (FY 2015)**

	B	SE	Exp(B)
<b>Accused Convicted of a Penetrative Offense</b>			
Military Service of Accused			
Army (reference)			
Marine Corps	-1.15	.39	.32*
Navy	-.48	.33	.62
Air Force	-.77	.28	.46*
Coast Guard	-.86	.64	.42
Accused Rank (Enlisted)	-.14	.39	.87
Victim Was Spouse or Intimate Partner	-.13	.31	.88
Female Victim(s)	-.54	.41	.58
Military Victim(s)	-.34	.25	.71
Number of Victims	.60	.18	1.82*
Number of Charges	.06	.02	1.06*
<b>Accused Convicted of At Least One Charge</b>			
Military Service of Accused			
Army (reference)			
Marine Corps	-.12	.23	.89
Navy	.003	.23	1.00
Air Force	-.48	.23	.61*
Coast Guard	1.20	.50	3.32*
Accused Rank (Enlisted)	-.56	.36	.57
Victim Was Spouse or Intimate Partner	-.61	.24	.55*
Female Victim(s)	-.39	.34	.68
Military Victim(s)	-.44	.18	.64*
Number of Victims	.04	.14	1.04
Number of Charges	.25	.02	1.28*
Accused Charged with Penetrative Offense	.38	.20	.68*

**TABLE 15B.**  
**LOGISTIC REGRESSION: VARIABLES RELATED TO CONVICTIONS (FY 2016)**

	B	SE	Exp(B)
<b>Accused Convicted of a Penetrative Offense<sup>a</sup></b>			
Military Service of Accused			
Army (reference)			
Marine Corps	-.71*	.35	.49
Navy	-.33	.33	.72
Air Force	-1.20*	.32	.30
Coast Guard	-.37	.70	.69
Accused Rank (Enlisted)	-.28	.51	.76
Victim Was Spouse or Intimate Partner	-.03	.29	.97
Female Victim(s)	-.95	.51	.39
Military Victim(s)	-.17	.25	.85
Number of Victims	.33	.18	1.39
Number of Charges	.02	.02	1.02
<b>Accused Convicted of At Least One Charge<sup>b</sup></b>			
Military Service of Accused			
Army (reference)			
Marine Corps	.04	.23	1.04
Navy	-.02	.23	.98
Air Force	-1.10*	.23	.33
Coast Guard	.56	.50	1.75
Accused Rank (Enlisted)	-.11	.36	.90
Victim Was Spouse or Intimate Partner	-.32	.24	.73
Female Victim(s)	-.36	.34	.70
Military Victim(s)	-.18	.18	.83
Number of Victims	-.11	.14	.90
Number of Charges	.17*	.02	1.19
Accused Charged with Penetrative Offense	-.39*	.20	.68

<sup>a</sup> Analysis includes cases with a penetrative offense charge.

<sup>b</sup> Analysis includes cases with a penetrative offense charge or a contact offense charge.

**TABLE 15C.**  
**LOGISTIC REGRESSION: VARIABLES RELATED TO CONVICTIONS (FY 2017)**

	B	SE	Exp(B)
<b>Accused Convicted of a Penetrative Offense<sup>a</sup></b>			
Military Service of Accused			
Army (reference)			
Marine Corps	-.45	.43	.64
Navy	-.66	.37	.52
Air Force	-.71*	.31	.49
Coast Guard	-.92	.86	.40
Accused Rank (Enlisted)	.37	.40	1.45
Victim Was Spouse or Intimate Partner	-.56	.35	.57
Female Victim(s)	.30	.56	1.35
Military Victim(s)	.40	.26	.67
Number of Victims	.78*	.21	2.17
Number of Charges	.01	.03	1.01
<b>Accused Convicted of At Least One Charge<sup>b</sup></b>			
Military Service of Accused			
Army (reference)			
Marine Corps	.01	.28	1.01
Navy	-.05	.23	
Air Force	-.92*	.23	.40
Coast Guard	.51	.50	1.66
Accused Rank (Enlisted)	-.07	.32	.94
Victim Was Spouse or Intimate Partner	.08	.27	1.08
Female Victim(s)	.19	.35	1.21
Military Victim(s)	-.14	.19	.87
Number of Victims	-.12	.15	.89
Number of Charges	.17*	.03	1.18
Accused Charged with Penetrative Offense	-.38	.20	.69

<sup>a</sup> Analysis includes cases with a penetrative offense charge.

<sup>b</sup> Analysis includes cases with a penetrative offense charge or a contact offense charge.

**TABLE 16A.**  
**LOGISTIC REGRESSION: VARIABLES RELATED TO ACQUITTALS AND DISMISSALS (FY 2015)**

	B	SE	Exp(B)
<b>Accused Acquitted of All Charges</b>			
Military Service of Accused			
Army (reference)			
Marine Corps	.30	.38	1.36
Navy	.71	.32	2.04*
Air Force	.94	.29	2.57*
Coast Guard	-1.81	1.07	.16
Accused Rank (Enlisted)	.71	.49	2.03
Victim Was Spouse or Intimate Partner	.62	.35	1.85
Female Victim(s)	.24	.42	1.28
Military Victim(s)	.45	.27	1.56
Number of Victims	-.36	.28	.70
Number of Charges	-.27	.04	.76*
Accused Charged with a Penetrative Offense	.94	.28	2.56*
<b>Dismissed Without Judicial Action</b>			
Military Service of Accused			
Army (reference)			
Marine Corps	1.41	.37	4.10*
Navy	.96	.36	2.62*
Air Force	.56	.33	1.74
Coast Guard	.34	.72	1.41
Accused Rank (Enlisted)	-.80	.46	.45
Victim Was Spouse or Intimate Partner	.74	.32	2.10*
Female Victim(s)	1.00	.63	2.73
Military Victim(s)	.13	.28	1.14
Number of Victims	-1.28	.70	.28
Number of Charges	-.26	.06	.77*
Accused Charged with a Penetrative Offense	.94	.34	2.56*

**TABLE 16B.**  
**LOGISTIC REGRESSION: VARIABLES RELATED TO ACQUITTALS AND DISMISSALS (FY 2016)**

	B	SE	Exp(B)
<b>Accused Acquitted of All Charges</b>			
Military Service of Accused			
Army (reference)			
Marine Corps	-.45	.32	.64
Navy	-.16	.29	.85
Air Force	.23	.23	1.26
Coast Guard	-.67	.78	.51
Accused Rank (Enlisted)	.59	.38	1.81
Victim Was Spouse or Intimate Partner	-.32	.25	.73
Female Victim(s)	-.23	.43	.79
Military Victim(s)	-.11	.21	.90
Number of Victims	-.06	.20	.94
Number of Charges	-.10*	.03	.90
Accused Charged with a Penetrative Offense	1.24*	.29	3.46
<b>Dismissed Without Judicial Action</b>			
Military Service of Accused			
Army (reference)			
Marine Corps	.73*	.31	2.08
Navy	.64*	.31	1.90
Air Force	.50	.27	1.65
Coast Guard	-.93	1.06	.39
Accused Rank (Enlisted)	-.10	.48	.90
Victim Was Spouse or Intimate Partner	.91*	.26	2.48
Female Victim(s)	.96	.63	2.61
Military Victim(s)	.09	.22	1.09
Number of Victims	-.01	.23	.99
Number of Charges	-.14*	.04	.87
Accused Charged with a Penetrative Offense	.21	.77	1.24

**TABLE 16C.**  
**LOGISTIC REGRESSION: VARIABLES RELATED TO ACQUITTALS AND DISMISSALS (FY 2017)**

	B	SE	Exp(B)
<b>Accused Acquitted of All Charges</b>			
Military Service of Accused			
Army (reference)			
Marine Corps	.48	.37	1.61
Navy	.43	.30	1.54
Air Force	.62*	.27	1.86
Coast Guard	.26	.66	1.30
Accused Rank (Enlisted)	.28	.37	1.33
Victim Was Spouse or Intimate Partner	-.07	.33	.94
Female Victim(s)	.63	.55	1.88
Military Victim(s)	.06	.23	1.06
Number of Victims	-.28	.27	.76
Number of Charges	-.11*	.04	.90
Accused Charged with a Penetrative Offense	.53*	.27	1.70
<b>Dismissed Without Judicial Action</b>			
Military Service of Accused			
Army (reference)			
Marine Corps	.77	.40	2.15
Navy	.08	.38	1.09
Air Force	.83*	.29	2.29
Coast Guard	-.50	1.06	.61
Accused Rank (Enlisted)	.21	.44	1.23
Victim Was Spouse or Intimate Partner	.51	.33	1.66
Female Victim(s)	.03	.52	1.03
Military Victim(s)	.07	.26	1.07
Number of Victims	.17	.23	1.18
Number of Charges	-.13*	.04	.88
Accused Charged with a Penetrative Offense	.74*	.34	2.09

**TABLE 17A.**  
**LOGISTIC REGRESSION: VARIABLES RELATED TO SENTENCE OF**  
**CONFINEMENT AND PUNITIVE SEPARATION (FY 2016)**

	B	SE	Exp(B)
<b>Adjudged Sentence Included Confinement</b>			
Military Service of Accused			
Army (reference)			
Marine Corps	.23	.40	1.26
Navy	.19	.40	1.20
Air Force	.53	.53	1.69
Coast Guard	-.32	.63	.72
Accused Rank (Enlisted)	-.36	.58	.70
Victim Was Spouse or Intimate Partner	.69	.52	2.00
Female Victim(s)	-.90	.68	0.41
Military Victim(s)	-.41	.35	0.66
Number of Victims	.15	.25	1.16
Number of Charges	.05	.03	1.05
Accused Convicted of a Penetrative Offense	2.44*	.55	11.52
Accused Convicted of a Contact Offense	.34	.39	1.40
<b>Adjudged Sentence Included Punitive Separation</b>			
Military Service of Accused			
Army (reference)			
Marine Corps	.11	.36	1.11
Navy	-.30	.38	.74
Air Force	-.13	.44	.88
Coast Guard	-.63	.62	.53
Accused Rank (Enlisted)	.27	.55	1.31
Victim Was Spouse or Intimate Partner	-.35	.42	.71
Female Victim(s)	-.85	.56	.43
Military Victim(s)	-.49	.32	.62
Number of Victims	-.16	.20	.85
Number of Charges	.08*	.03	1.09
Accused Convicted of a Penetrative Offense	3.95*	.62	51.85
Accused Convicted of a Contact Offense	.69	.36	2.00

**TABLE 17B.**  
**LOGISTIC REGRESSION: VARIABLES RELATED TO SENTENCE OF  
CONFINEMENT AND PUNITIVE SEPARATION (FY 2017)**

	B	SE	Exp(B)
<b>Adjudged Sentence Included Confinement</b>			
Military Service of Accused			
Army (reference)			
Marine Corps	.57	.52	1.78
Navy	.71	.43	2.02
Air Force	-.13	.50	.88
Coast Guard	1.08	.79	2.95
Accused Rank (Enlisted)	-.93	.56	.39
Victim Was Spouse or Intimate Partner	.52	.53	1.68
Female Victim(s)	1.04	.65	2.82
Military Victim(s)	-.84*	.39	.43
Number of Victims	.58	.40	1.79
Number of Charges	.08	.04	1.08
Accused Convicted of a Penetrative Offense	2.48*	.53	11.96
Accused Convicted of a Contact Offense	1.87*	.60	6.50
<b>Adjudged Sentence Included Punitive Separation</b>			
Military Service of Accused			
Army (reference)			
Marine Corps	.76	.49	2.14
Navy	-.01	.41	.99
Air Force	.52	.50	1.68
Coast Guard	-1.36	.90	.26
Accused Rank (Enlisted)	.99	.66	2.70
Victim Was Spouse or Intimate Partner	.21	.45	.123
Female Victim(s)	2.31*	.87	10.10
Military Victim(s)	-.50	.35	.61
Number of Victims	.57	.35	1.77
Number of Charges	.11*	.04	1.11
Accused Convicted of a Non-Sexual Assault Offense <sup>a</sup>	-3.46*	.44	.03

<sup>a</sup> The reference category is accused convicted of penetrative offense or a contact offense. These two conviction offense categories (penetrative and contact) were combined because all penetrative conviction cases ended in punitive separation (see Table 13B, Variables Associated with Adjudged Sentence of Punitive Separation (FY 2017), above).

**TABLE 18A.**  
**OLS REGRESSION: VARIABLES RELATED TO SENTENCE SEVERITY (FY 2016)**

	B	Beta	T-value
Military Service of Accused			
Army (reference)			
Marine Corps	-.91	-.07	-1.41
Navy	-.50	-.02	-.46
Air Force	.93	.08	1.60
Coast Guard	-1.13	-.10	-1.93
Accused Rank (Enlisted)	-.27	-.02	-.32
Victim Was Spouse or Intimate Partner	-.17	-.02	-.28
Female Victim(s)	-.24	-.02	.76
Male Victim(s)	-.35	-.04	-.75
Number of Victims	-.37	-.07	-1.62
Number of Charges	0.22*	.29	5.26
Accused Convicted of a Penetrative Offense	5.98*	.66	12.68
Accused Convicted of a Contact Offense	1.83*	.15	2.85

**TABLE 18B.**  
**OLS REGRESSION: VARIABLES RELATED TO SENTENCE SEVERITY (FY 2017)**

	B	Beta	T-value
Military Service of Accused			
Army (reference)			
Marine Corps	1.35*	.10	2.05
Navy	-1.44	-.06	-1.25
Air Force	1.82*	.14	2.71
Coast Guard	.35	.03	.61
Accused Rank (Enlisted)	.05	.00	.06
Victim Was Spouse or Intimate Partner	.74	.07	1.20
Female Victim(s)	1.10	.05	1.07
Male Victim(s)	-.71	-.08	-1.53
Number of Victims	.03	.01	.12
Number of Charges	.19*	.25	4.27
Accused Convicted of a Penetrative Offense	6.36*	.68	12.71
Accused Convicted of a Contact Offense	3.26*	.25	4.76

**TABLE 19A.  
ADJUDGED SENTENCING SEVERITY SCALE (FY 2016)**

Sentence	n	%
1. Confinement up to and including 2 months	32	11.5
2. Confinement greater than 2 months and up to 5 months	18	6.5
3. Confinement greater than 5 months and up to 8 months	7	2.5
4. Confinement 9 months to 12 months	5	1.8
5. Confinement 13 months to 18 months OR punitive separation	12	4.3
6. Punitive separation and confinement up to and including 2 months	11	4.0
7. Punitive separation and confinement greater than 2 months and up to 5 months	17	6.1
8. Punitive separation and confinement greater than 5 months and up to 8 months	37	13.3
9. Punitive separation and confinement 9 months to 12 months	26	9.4
10. Punitive separation and confinement 13 months to 18 months	16	5.8
11. Punitive separation and confinement 19 months to 24 months	12	4.3
12. Punitive separation and confinement 25 months to 36 months	22	7.9
13. Punitive separation and confinement 37 months to 60 months	23	8.3
14. Punitive separation and confinement 60 months to 120 months	21	7.6
15. Punitive separation and confinement greater than 120 months	19	6.8

**TABLE 19B.  
ADJUDGED SENTENCING SEVERITY SCALE (FY 2017)**

Sentence	n	%
1. Confinement up to and including 2 months	28	10.8
2. Confinement greater than 2 months and up to 5 months	20	7.7
3. Confinement greater than 5 months and up to 8 months	8	3.1
4. Confinement 9 months to 12 months	0	0.0
5. Confinement 13 months to 18 months OR punitive separation	13	5.0
6. Punitive separation and confinement up to and including 2 months	12	4.6
7. Punitive separation and confinement greater than 2 months and up to 5 months	16	6.2
8. Punitive separation and confinement greater than 5 months and up to 8 months	26	10.0
9. Punitive separation and confinement 9 months to 12 months	17	6.6
10. Punitive separation and confinement 13 months to 18 months	21	8.1
11. Punitive separation and confinement 19 months to 24 months	14	5.4
12. Punitive separation and confinement 25 months to 36 months	19	7.3
13. Punitive separation and confinement 37 months to 60 months	17	6.6
14. Punitive separation and confinement 60 months to 120 months	32	12.4
15. Punitive separation and confinement greater than 120 months	16	6.2



**APPENDIX J.  
SEPTEMBER 13, 2018, LETTER FROM DAC-IPAD TO THE  
SECRETARY OF DEFENSE REGARDING ARTICLE 140a,  
UNIFORM CODE OF MILITARY JUSTICE**





THE DEFENSE ADVISORY COMMITTEE ON  
INVESTIGATION, PROSECUTION, AND DEFENSE OF  
SEXUAL ASSAULT IN THE ARMED FORCES

September 13, 2018

The Honorable James Mattis  
Secretary of Defense  
1000 Defense Pentagon  
Washington, DC 20301-1000

Dear Mr. Secretary:

As the Chair of the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (the Committee or DAC-IPAD), a federal advisory committee established by section 546 of the National Defense Authorization Act for Fiscal Year 2015 (Public Law No. 113-291), I respectfully submit the advice and recommendations of the DAC-IPAD regarding the implementation of section 5504 of the Military Justice Act of 2016 (Public Law No. 114-328) (Article 140a, Uniform Code of Military Justice (UCMJ), *Case management; data collection and accessibility*) (hereinafter “Article 140a”). Article 140a requires the Secretary of Defense to develop uniform standards and criteria across the Military Services, to be used at all stages of the military justice system, including the pretrial, trial, post-trial, and appellate processes, using, insofar as practicable, the best practices of federal and state courts.<sup>1</sup>

The goals of Article 140a—to achieve greater efficiency and transparency in the processing of cases in the military justice system and to facilitate periodic reviews of the UCMJ and Manual for Courts-Martial<sup>2</sup>—touch on an issue of great importance to this Committee: the lack of comprehensive and meaningful information about the military justice response to sexual assault in the Armed Forces. This concern was previously highlighted by the Judicial Proceedings Panel (JPP) in three separate reports to the Secretary of Defense.<sup>3</sup> The JPP found that the Department of Defense (DoD) does not collect sufficient data to fully assess how adult sexual assault cases are resolved through the military justice system, and recommended that DoD adopt one uniform system for the collection and analysis of sexual assault case documents and

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<sup>1</sup> 10 U.S.C. § 940a (2016).

<sup>2</sup> 10 U.S.C. § 946 (2016). Article 146 requires the Military Justice Review Panel to conduct periodic reviews of the UCMJ and to gather and analyze sentencing data from general and special courts-martial.

<sup>3</sup> The Judicial Proceedings Since Fiscal Year 2012 Amendments Panel (“Judicial Proceedings Panel” or “JPP”) was established by the National Defense Authorization Act for Fiscal Year 2013, as amended, Pub. L. No. 112-239, § 576(a)(1), 126 Stat. 1632 (2013). JPP reports are available at <https://jpp.whs.mil>; see, in particular, JPP REPORT ON STATISTICAL DATA REGARDING MILITARY ADJUDICATION OF SEXUAL ASSAULT OFFENSES (April 2016), JPP REPORT ON STATISTICAL DATA REGARDING MILITARY ADJUDICATION OF SEXUAL ASSAULT OFFENSES FOR FISCAL YEAR 2015 (September 2017), JPP REPORT ON PANEL CONCERNS REGARDING THE FAIR ADMINISTRATION OF MILITARY JUSTICE IN SEXUAL ASSAULT CASES (September 2017).

data.<sup>4</sup> The DAC-IPAD fully supports the JPP's assessment and believes that understanding these cases, which are frequently complex in nature and have an enormous impact on both the victim and the accused, can shed light on the effects of numerous recent reforms in the military and can highlight areas for further study and improvement.

As part of its mandate, the DAC-IPAD is currently reviewing thousands of case file documents spanning the investigation and prosecution of sexual assault offenses and is examining those case outcomes across a variety of factors.<sup>5</sup> This review underscores the necessity of accurate, thorough, and complete data to achieve a greater understanding of how sexual assault cases are handled in the military. Article 140a offers a similar opportunity to generate uniform, thorough, and reliable data, for sexual assault and all other UCMJ offenses, over the long term, thereby benefiting the Military Services, DoD, and external stakeholders. Therefore, the DAC-IPAD members, on the basis of their collective experience and their ongoing review of sexual assault cases, offer the following recommendations to the Secretary of Defense about how to best implement Article 140a in the context of sexual assault crimes committed by military members.

**Recommendation 1:** The uniform standards and criteria developed to implement Article 140a, UCMJ, should reflect the following best practices for case data collection:

- a. Collect all case data only from standardized source documents (legal and investigative documents) that are produced in the normal course of the military justice process, such as the initial report of investigation, the commander's report of disciplinary or administrative action, the charge sheet, the Article 32 report, and the report of result of trial;
- b. Centralize document collection by mandating that all jurisdictions provide the same procedural documents to one military justice data office/organization within DoD;
- c. Develop one electronic database for the storage and analysis of standardized source documents, and locate that database in the centralized military justice data office/organization within DoD;
- d. Collect and analyze data quarterly to ensure that both historical data and analyses are as up-to-date as possible;
- e. Have data entered from source documents into the electronic database by one independent team of trained professionals whose full-time occupation is document analysis and data entry. This team should have expertise in the military justice process and in social science research methods, and should ensure that the data are audited at regular intervals.

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<sup>4</sup> See Enclosure 1, Judicial Proceedings Panel Findings and Recommendations Regarding Military Justice Case Data for Sexual Assault Offenses, and Enclosure 2, Excerpt from Department of Defense Response to Judicial Proceedings Panel Recommendations.

<sup>5</sup> See Enclosure 3, Documents and Data Elements Collected by the DAC-IPAD for Cases in Which Sexual Assault Charges Have Been Preferred.

**Recommendation 2:** The source documents referenced in DAC-IPAD Recommendation 1 should contain uniformly defined content covering all data elements that DoD decides to collect to meet the requirements of Articles 140a and 146, UCMJ.

**Recommendation 3:** The data produced pursuant to Article 140a, UCMJ,<sup>6</sup> should serve as the primary source for the Military Justice Review Panel's periodic assessments of the military justice system, which are required by Article 146, UCMJ, and as the sole source of military justice data for all other organizations in DoD and for external entities.

**Recommendation 4:** Article 140a, UCMJ, should be implemented so as to require collection of the following information with respect to allegations of both adult-victim and child-victim sexual offenses, within the meaning of Articles 120, 120b, and 125, UCMJ (10 U.S.C. §§ 920, 920b, and 925 (2016)):

- a. A summary of the initial complaint giving rise to a criminal investigation by a military criminal investigation organization concerning a military member who is subject to the UCMJ, and how the complaint became known to law enforcement;
- b. Whether an unrestricted report of sexual assault originated as a restricted report;
- c. Demographic data pertaining to each victim and accused, including race and gender;
- d. The nature of any relationship between the accused and the victim(s);
- e. The initial disposition decision under Rule for Court-Martial 306, including the decision to take no action, and the outcome of any administrative action, any disciplinary action, or any case in which one or more charges of sexual assault were preferred, through the completion of court-martial and appellate review;
- f. Whether a victim requested an expedited transfer or a transfer of the accused, and the result of that request;
- g. Whether a victim declined to participate at any point in the military justice process;
- h. Whether a defense counsel requested expert assistance on behalf of a military accused, whether those requests were approved by a convening authority or military judge, and whether the government availed itself of expert assistance; and
- i. The duration of each completed military criminal investigation, and any additional time taken to complete administrative or disciplinary action against the accused.

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<sup>6</sup>The data collected pursuant to Article 140a should include, at a minimum, the elements listed in Enclosure 3, Documents and Data Elements Collected by the DAC-IPAD for Cases in Which Sexual Assault Charges Have Been Preferred.

**Recommendation 5:** The Military Services may retain their respective electronic case management systems for purposes of managing their military justice organizations, provided that

- a. The Military Services use the same uniform standards and definitions to refer to common procedures and substantive offenses in the Manual for Courts-Martial, as required by Article 140a; and
- b. The Military Services develop a plan to transition toward operating one uniform case management system across all of the Military Services, similar to the federal judiciary’s Case Management/Electronic Court Filing (CM/ECF) system.

### Rationale

Article 140a provides that the “collection and analysis of data concerning substantive offenses and procedural matters” shall be done “at all stages of the military justice system,” in a manner that “facilitates case management and decision making within the military justice system, and that enhances the *quality* of periodic reviews under section 946 of this title (article 146)” (emphasis added).<sup>7</sup> This statute was a product of the comprehensive review of the UCMJ and Manual for Courts-Martial conducted in 2015 by the Department of Defense Military Justice Review Group (MJRG), led by a former Chief Judge of the United States Court of Appeals for the Armed Forces, the Honorable Andrew S. Effron. The MJRG found that the Services’ separate data collection and case management practices make it difficult to aggregate and analyze military justice data on a system-wide basis.<sup>8</sup>

The DAC-IPAD lauds the objectives of Article 140a, and believes that the quality of the information collected pursuant to this statute will ultimately determine the success of this UCMJ reform. Article 140a data have great potential value for military practitioners and managers in the field seeking ways to improve their practice. Another important aim of this statute is to provide a foundation for future evaluations of military law and procedure.<sup>9</sup> The data that undergird these policy decisions, particularly decisions that lead to Service members being deprived of their liberty following a court-martial, must be accurate and comprehensive. Therefore the Committee urges that quality assurance drive all aspects of Article 140a’s implementation.

Recommendations 1 and 2 are based principally on the quality assurance measures used by the United States Sentencing Commission to produce data concerning federal criminal sentencing practices. They also derive from the experiences of the JPP and DAC-IPAD in maintaining a document analysis system that provides consistent information about sexual assault cases across all five Military Services. Standardized case documents are a reliable source of information because the documents are created to reflect, or effect, the very process that they describe—e.g., the initiation of a criminal investigation, the preferral of charges, or the outcome of a court-martial. Centralizing the document collection within a single organization, and placing

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<sup>7</sup> 10 U.S.C. § 940a (2016).

<sup>8</sup> REPORT OF THE MILITARY JUSTICE REVIEW GROUP PART I: UCMJ RECOMMENDATIONS 1013 (Dec. 22, 2015), available at [http://ogc.osd.mil/images/report\\_part1.pdf](http://ogc.osd.mil/images/report_part1.pdf).

<sup>9</sup> *Id.*

one team of experts in charge of data entry and analysis, helps foster both accountability for producing documents and consistency in the interpretation of those documents. This arrangement is also intended to relieve military justice personnel of the responsibility for responding to numerous data queries. Producing analyses from case documents on a recurring basis throughout the year would serve two purposes: provide transparency to stakeholders and avoid the overly cumbersome and lengthy document or data searches often involved in annual and ad hoc reviews.

The Committee recognizes that there may be limitations to collecting data solely from select standard investigative and procedural case documents, which may not contain some information that is useful to know about a sexual assault case. However, this approach makes it possible to gather accurate, verifiable data on many important aspects of the military justice system in a way that does not make excessive demands on military justice personnel. Relying on procedural case documents, analysts can effectively identify specific topic areas for further investigation, and a more targeted review of other documents or sources of information can follow, as needed.

As Recommendation 4 states, Article 140a should require information about every sexual assault allegation made against a Service member under the military's jurisdiction that is investigated by the MCIOs. For purposes of this statute, "sexual assault cases" should include offenses involving both adult and child victims, and should encompass unwanted sexual act and contact offenses so that DoD, lawmakers, and the public can better understand the nature of sexual violence occurring in the military. The DAC-IPAD's review of sexual assault cases indicates that annually, a majority of the cases involving allegations of penetrative sexual assault are not selected for prosecution.<sup>10</sup> Therefore, any data collection efforts that do not include cases resolved outside the court-martial process would omit a significant amount of information about how cases progress through the military justice system and about the factors that influence those outcomes. Moreover, the Committee appreciates the significant impact of a criminal investigation on the lives and careers of both the victim and the accused, and having comprehensive data regarding the investigative process can contextualize those effects.

In addition to reviewing annually the results of sexual assault courts-martial, the DAC-IPAD is also currently reviewing the entire investigative case file associated with each of the penetrative sexual assault cases closed without action in fiscal year 2017. Collecting information about sexual assault cases that are investigated and closed without action may present more challenges than analyzing information in court-martial documents. However, those difficulties should not deter DoD from systematically collecting reliable information about cases that do not result in disciplinary action. Failing to do so would leave a substantial void in any analysis of the processing of all cases that include an MCIO investigation.

Although there are differences among the Service MCIOs, each MCIO has a routine way of recording details about the initial complaint of sexual assault received by law enforcement and documenting the commander's decision as to the disposition of the sexual assault case. The

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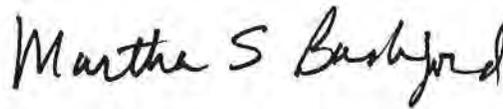
<sup>10</sup> DEFENSE ADVISORY COMMITTEE ON INVESTIGATION, PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN THE ARMED SERVICES ANNUAL REPORT 23 (March 2018), *available at* [https://dacipad.whs.mil/images/Public/08-Reports/DACIPAD\\_Report\\_02\\_Final\\_20180330\\_Web\\_Amended.pdf](https://dacipad.whs.mil/images/Public/08-Reports/DACIPAD_Report_02_Final_20180330_Web_Amended.pdf).

Committee recognizes in these documents an opportunity for DoD to capture descriptive data useful for the purposes of Article 140a, and recommends that DoD explore ways to record such information consistently across all the Military Services in order to streamline the documents needed to collect information under Article 140a.

The Military Justice Act of 2016 directs DoD and the Military Services to develop a modern, unified system for collecting information about sexual assault and other criminal offenses. The Committee notes that the experience of the federal district courts and many other jurisdictions illustrates the benefits of operating a common data collection system, making it well worth overcoming the inherent challenges faced by an organization undertaking any large-scale transition. As you recently wrote in your memorandum on discipline and lethality,<sup>11</sup> the military justice system preserves good order and discipline and consequently, it is essential to military readiness. Therefore, DoD must provide sufficient financial resources to maintain a military justice system that is fair, efficient, and effective. If the Military Services are required to implement Article 140a with existing resources alone, then future assessments of the military justice system will lack an adequate foundation, and thus will lack an adequate justification.

Finally, while the Committee's charter covers only sexual assault offenses and other sexual misconduct, we hope that our recommendations about when, in the military justice process, case data collection should start and end will be considered by those groups commenting on the other punitive articles of the UCMJ.

Sincerely,



Martha Bashford  
Chair

Enclosures:

1. Judicial Proceedings Panel Findings and Recommendations Regarding Military Justice Case Data for Sexual Assault Offenses
2. Excerpt from Department of Defense Response to Judicial Proceedings Panel Recommendations
3. Documents and Data Elements Collected by the DAC-IPAD for Cases in Which Sexual Assault Charges Have Been Preferred

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<sup>11</sup> See "Secretary of Defense: Message to the Force" (August 17, 2018), <https://www.marines.mil/News/Press-Releases/Press-Release-Display/Article/1605285/secretary-of-defense-message-to-the-force/>.

# ENCLOSURE 1

# Enclosure 1

## Judicial Proceedings Panel (JPP) Findings and Recommendations Regarding Military Justice Case Data for Sexual Assault Offenses

*The following JPP Findings and Recommendations have been excerpted from three published reports of the JPP, available at <http://jpp.whs.mil>.\**

Recommendation 37 [April 2016]: The Department of Defense collect and analyze case adjudication data using a standardized, document-based collection model, similar to systems used by the Judicial Proceedings Panel or U.S. Sentencing Commission, that incorporates uniform definitions and categories across all of the military Services.

- DoD does not collect sufficient adjudication data to fully assess how adult sexual assault cases are resolved through the military justice system.
- Other than case information entered by Service legal officers into DoD's database, DoD does not centrally collect and manage information about military justice processing in sexual assault cases. The military Services, however, have Service-specific systems, tailored to a decentralized, command-driven military justice system, to collect and manage information for cases that occur in their Service.
- The JPP developed an electronic database, modeled on the database used by the U.S. Sentencing Commission, for collecting and analyzing information from court-martial case documents. This system was used to accumulate procedural information from court-martial documents for the data analysis in this report.
- Collecting standard information from court-martial documents regarding dispositions, charges, outcomes, and punishments imposed in adult sexual assault cases could improve Service-level analysis and could be incorporated into DoD's reports to Congress.
- Because the Judge Advocate General's Corps administer military justice in each of the military Services, case adjudication data could be compiled and analyzed by the Services in a manner compatible with DoD's electronic database and congressional reporting requirements.
- At a minimum, analysis of how adult sexual assault cases are resolved through the military justice system would be improved by the collection of the following case information:
  - all sexual assault charges that were preferred and the outcome of each charge, including whether the charge was referred to court-martial, dismissed, or resolved by alternate means;
  - type of court-martial held;
  - pleas of the accused;
  - trial forum;
  - findings;

## Enclosure 1

- sentence; and
- convening authority action on the findings and sentence.
- Because procedural data do not provide complete information about a case, they must be supplemented by potentially relevant case facts and evidentiary issues. Such information may include characteristics of the victim, the relationship between the accused and victim, whether the victim made a prompt report, whether the victim was willing to cooperate, whether the victim engaged in any risk-taking behavior around the time of the incident, and the presence of eyewitnesses or physical evidence.

Recommendation 38 [April 2016]: The Department of Defense include legal disposition information related to all adult sexual assault complaints in one annual DoD report, changing its policy that excludes adult-victim cases that are handled by the Family Advocacy Program from Sexual Assault Prevention and Response Office reports.

- DoD SAPRO annually provides Congress with a description of the resolution of each unrestricted report of sexual assault covered by DoD's sexual assault prevention and response policy; however, that policy precludes reporting on adult sexual assault cases involving victims who are Service members' spouses, intimate partners, or family members over the age of consent under the UCMJ (16 years of age), for whom the DoD Family Advocacy Program (FAP) provides victim advocacy services.
- FAP does not collect or report case adjudication data for the sexual assault reports it receives, even when FAP provides victim advocacy services through completion of a court-martial for a sexual assault crime. Because these cases are excluded from DoD's reports on the legal resolution of sexual assault cases, it is not possible to accurately determine how many sexual assault cases are handled through the military justice system.
- Requiring sexual assault case disposition and adjudication data from FAP to be reported by DoD in its annual report to Congress would ensure a complete accounting of all adult sexual assault cases involving a military member.
- The Response Systems to Adult Sexual Assault Crimes Panel, in its June 2014 report to the Secretary of Defense, examined this issue and similarly recommended it be corrected.

Recommendation 52 [April 2017]: The Secretary of Defense and the military Services use a standardized, document-based collection model for collecting and analyzing case adjudication data in order to implement Article 140a, Uniform Code of Military Justice (*Case Management; Data Collection and Accessibility*)

- Document-based case adjudication data collection is a best practice utilized and recommended by the U.S. Sentencing Commission. The JPP's document-based approach to data collection involves obtaining relevant case documents from the

## Enclosure 1

military Services (e.g., charge sheet, report of result of trial) and recording the relevant case history data into a centralized database for analysis.

- In its April 2016 report, the JPP recommended that the Department of Defense collect and analyze case adjudication data using a standardized, document-based collection model similar to the systems used by the JPP or the U.S. Sentencing Commission.
- Article 140a, enacted in the National Defense Authorization Act for Fiscal Year 2017, requires the establishment within four years of uniform standards and criteria for collecting military justice data across all of the military Services.

Recommendation 53 [April 2017]: The new military justice data collection system required to be developed pursuant to Article 140a, Uniform Code of Military Justice (*Case Management; Data Collection and Accessibility*), should be designed so as to become the exclusive source of sexual assault case adjudication data for DoD's annual report to Congress on DoD's sexual assault prevention and response initiatives.

- DoD SAPRO's data collection and reporting on the legal disposition of adult-victim sexual assault cases do not describe the results of sexual assault reports made within DoD with sufficient clarity or thoroughness for Congress or DoD to understand how these cases are handled within the military justice system.
- Military justice personnel should be involved in providing the information collected pursuant to Article 140a, which would improve the accuracy and level of detail currently contained in DoD's reports on sexual assault cases.
- DOD SAPRO should rely solely on the Article 140a data for its sexual assault case adjudication data when developing the DoD SAPRO annual report to Congress.
- To the extent possible, DoD should avoid developing a source of data under Article 140a that does not communicate with other sources of data within DoD, such as DoD SAPRO's sexual assault incident database.

Recommendation 54 [April 2017]: The successor federal advisory committee to the JPP, the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces, should consider continuing to analyze adult-victim sexual assault court-martial data on an annual basis as the JPP has done, and should consider analyzing the following patterns that the JPP discovered in its analysis of fiscal year 2015 court-martial data:

- a. Cases involving military victims tend to have less punitive outcomes than cases involving civilian victims;
- b. The conviction and acquittal rates for sexual assault offenses vary significantly among the military Services; and

## Enclosure 1

c. If a Service member is charged with a sexual assault offense, and pleads not guilty, the probability that he or she will be convicted of a sexual assault offense is 36%, and the probability that he or she will be convicted of any offense (i.e., either a sex or a non-sex offense) is 59%.

- Because the data required to meet the JPP's congressional tasks were not available or collected by any entity within DoD, including the annual DoD SAPRO report, the JPP independently collected the needed information directly from case files maintained by the military Services.
- The JPP heard testimony from civilian experts from the Bureau of Justice Statistics and the U.S. Sentencing Commission on best practices for collecting accurate and reliable information about case adjudication.
- In 2014, the JPP, in collaboration with the Washington Headquarters Service, developed a document-based database containing information on more than 2,500 military sexual assault cases adjudicated in fiscal years 2012 to 2015.
- In order to understand the data collected, the JPP retained a nationally recognized criminologist who was not affiliated with DoD or any military Service to perform an in-depth statistical analysis of the data.
- The JPP's charter ends on September 30, 2017, and no similar project or method currently exists to continue this in-depth study of sexual assault cases in the military justice system once the JPP concludes.

Recommendation 60 [September 2017]: The Secretary of Defense and the DAC-IPAD continue to gather data and other evidence on disposition decisions and conviction rates of sexual assault courts-martial to supplement information provided to the JPP Subcommittee during military installation site visits and to determine future recommendations for improvements to the military justice system.

- Counsel on site visits reported high acquittal rates in sexual assault cases due to a less robust Article 32 process, the standard of probable cause for referral of charges, and pressure on convening authorities to refer cases to trial even when based on weak evidence.
- Case documents provided by the Services for sexual assault cases tried by court-martial in fiscal year 2015 show that for cases in which the most serious offense tried was a penetrative offense, 39% resulted in convictions of a sexual assault offense, 31% resulted in convictions of a non-sex offense only, and 30% resulted in acquittal of all charges. For cases in which the most serious sex offense tried was a sexual contact offense, 25% resulted in convictions of a sexual contact offense, 57% resulted in convictions of a non-sex offense only, and 18% resulted in acquittal of all charges.

## Enclosure 1

\*The published reports of the JPP are as follows:

1. *The Judicial Proceedings Panel Report on Statistical Data Regarding Military Adjudication of Sexual Assault Offenses* (April 2016)
2. *The Judicial Proceedings Panel Report on Statistical Data Regarding Military Adjudication of Sexual Assault Offenses for Fiscal Year 2015* (September 2017)
3. *The Judicial Proceedings Panel Report on Panel Concerns Regarding the Fair Administration of Military Justice in Sexual Assault Cases* (September 2017)

# ENCLOSURE 2

## Enclosure 2

### Excerpt from original response



PERSONNEL AND  
READINESS

OFFICE OF THE UNDER SECRETARY OF DEFENSE  
4000 DEFENSE PENTAGON  
WASHINGTON, D.C. 20301-4000

APR 5 2017

Elizabeth Holtzman, Chair  
Judicial Proceedings Panel  
One Liberty Center  
875 North Randolph Street  
Arlington, VA 22203-1995

Dear Chairperson Holtzman:

This letter is in response to your Request for Information, Set 11, dated March 6, 2017.

In Question 164A, you requested the status of implementation of Judicial Proceedings Panel (JPP) recommendations 37 and 38. New requirements set forth in the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 pertaining to the collection and analysis of military justice data will influence our way forward on these recommendations. As such, how we will implement the recommendations in light of the NDAA requirements remains pre-decisional.

[FOR CLARITY, UNRELATED CONTENT HAS BEEN REMOVED BY DAC-IPAD STAFF]

We continue to support and appreciate the work that the JPP is doing to improve military justice. Dr. Nate Galbreath, the Deputy Director of the DoD Sexual Assault Prevention and Response Office, and Ms. Kathy Robertson, Family Advocacy Program Director, will be my representatives at the meeting on April 7, 2017.

A handwritten signature in blue ink that reads "A. M. Kurta".

A. M. Kurta  
Performing the Duties of the Under Secretary of  
Defense for Personnel and Readiness

# ENCLOSURE 3

## Enclosure 3

### **Documents and Data Elements Collected by the DAC-IPAD for Cases in Which Sexual Assault Charges Have Been Preferred**

#### **Case documents collected in preferred cases:**

- Charge Sheet
- Article 32 Report, or waiver of Article 32 preliminary hearing
- Pretrial Advice
- Pretrial Agreement (includes a stipulation of fact)
- Record of Trial cover sheet
- Dismissal Order (when charge(s) are withdrawn & dismissed )
- Request for trial by Judge Alone or Panel of Military Members
- Exhibit Index
- Report of Result of Trial (findings and sentence; terms of a pretrial agreement)
- Staff Judge Advocate Post-trial Recommendation to Convening Authority
- Court-Martial Order (findings and sentence as approved by the Convening Authority)
- Resignation/Discharge Documents
- Victim Input on case disposition
- Special Victim's Counsel/Victim's Legal Counsel Notice of Appearance
- Appellate opinions or summary disposition

## Enclosure 3

### Case data elements collected in preferred cases:

#### Administrative

- Military service of the accused
- Fiscal year of case disposition (one of the following):
  - Date of adjudged sentence or acquittal at court-martial
  - Date on which all court-martial charges were dismissed
  - Date on which the accused's request for administrative discharge or resignation in lieu of court-martial was approved
- Case Number: Unique DAC-IPAD case number assigned to each adult sexual assault case
- Location where the case was processed: Charge Sheet, Block 5 (Unit, Organization, or Ship Name)
  - Location is CONUS, OCONUS, or Vessel (Alaska, Hawaii, Guam are OCONUS)

#### Demographics

- Accused Rank
- Accused Gender
- Victim(s) Gender (one of the following):
  - All victims are females
  - All victims are males
  - Victims include females and males
- Victim(s) Military Status:
  - All victims are military members
  - All victims are civilians
  - Victims include military members and civilians

#### Pretrial

- Victim has Special Victims' Counsel or Victims' Legal Counsel: Yes or No
- Accused ordered into pretrial confinement: Yes or No
  
- All offenses listed on the charge sheet (sex offenses and non-sex offenses)
- The offense occurred after June 24, 2014 (mandatory minimum sentence in effect for penetrative offenses): Yes or No
- Most serious charged sex offense by type: Penetrative or Contact Offense
  
- Article 32 hearing (one of the following):
  - The hearing was held
  - The accused waived the hearing
  - Not applicable
- Article 32 hearing officer's recommended disposition for every offense charged
  - If the Article 32 hearing officer recommends dismissal of charges or alternate disposition, note the rationale if available
- Whether the victim appeared at the Article 32 hearing
- Article 32 hearing or waiver occurred after December 26, 2014 (effective date for current Article 32 preliminary hearing procedures)
  
- Staff Judge Advocate's (SJA) pretrial advice applicable in this case (required for general courts-martial): Yes or No

## Enclosure 3

- SJA's advice as to the disposition of every offense charged
  - If SJA recommends dismissal or alternate disposition, note rationale if available
- Pretrial Agreement (PTA): Yes or No
  - Accused pleading guilty to one or more sex offenses: Yes or No
  - Other terms of the PTA (limits on confinement/punitive separation/referral to a specific forum for disposition/other)
- Disposition of all charges at the point of referral to court-martial or other decision on case disposition
  - Charges are referred to trial by court-martial (note type):
    - General court-martial
    - Special court-martial
    - Summary court-martial
  - Charges are dismissed (note whether before or after referral of charges to court-martial)
    - Reason for dismissal of charges, if known:
      - Victim does not wish to participate in the court-martial process
      - Other
      - Information not available
  - Charges are resolved by alternate disposition (i.e., nonjudicial punishment, administrative separation or other administrative action)

### Trial

- Trial forum: Military Judge / Panel Members / Summary Court-martial Officer
- Accused's plea entered as to every offense referred to court-martial
  - Note guilty plea to any sex offense
  - If plea is guilty of a lesser included offense, choose from offense listing
- Court-Martial Outcome:
  - Findings as to every offense tried
  - Accused found guilty of any sex offense: Yes or No
  - Accused found guilty of a lesser included offense: Yes or No
  - Most serious sex offense for which the accused was found guilty: penetrative or contact offense
  - Accused acquitted of all charges: Yes or No
  - Any charges dismissed by the military judge
  - Any charges withdrawn by the government pursuant to a PTA

### Sentence

- Sentenced adjudged (confinement and/or punitive separation/other type of punishment)
- Sentence approved by the convening authority pursuant to a PTA or clemency granted (ex: forfeitures of pay and allowances deferred or waived)

### Appellate Review

- Automatic appellate review required by Service Court of Criminal Appeals (CCA): Yes or No
- Court-Martial findings/sentence affirmed

## Enclosure 3

- Court-martial findings/sentence relief granted
- Rehearing ordered/authorized
- Fiscal year of appellate decision
- Appellate issue(s) related to a sex offense

### Dates

- Dates for the following:
  - Preferral of charges
  - Article 32 preliminary hearing
  - Referral of charges
  - Findings or sentence adjudged
  - Convening Authority action on the court-martial
  - CCA decision
  - Court of Appeals for the Armed Forces (CAAF) decision
  - U.S. Supreme Court decision



**APPENDIX K.  
JANUARY 23, 2019, LETTER FROM MR. PAUL S. KOFFSKY,  
DOD SENIOR DEPUTY GENERAL COUNSEL AND  
DEPUTY GENERAL COUNSEL FOR PERSONNEL & HEALTH  
POLICY, TO DAC-IPAD CHAIR MARTHA S. BASHFORD  
RESPONDING TO DAC-IPAD'S RECOMMENDATIONS  
REGARDING ARTICLE 140a**





DEPARTMENT OF DEFENSE  
OFFICE OF THE GENERAL COUNSEL

1600 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1600

January 23, 2019

Ms. Martha Bashford  
Chair  
Defense Advisory Committee on Investigation, Prosecution and Defense of Sexual Assault in the  
Armed Forces  
One Liberty Center  
875 N. Randolph Street  
Suite 150  
Arlington, VA 22203

Dear Ms. Bashford:

I am writing to thank the Defense Advisory Committee on Investigation, Prosecution and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) for its proposal regarding the data collection and analysis standards mandated by Article 140a of the Uniform Code of Military Justice (UCMJ) and to provide the DAC-IPAD with the standards the Department of Defense (DoD) adopted (enclosed).

DoD carefully studied and analyzed the DAC-IPAD's proposal. While that study and analysis helped to inform the standards that were adopted, the Department concluded it would be inadvisable to adopt the DAC-IPAD's proposal without first conducting a pilot program to assess the proposed standards' operation and the personnel and fiscal requirements it would create.

The following considerations helped to inform the Department's decision. First, to carry out Article 140a's statutory mandate and to create a data collection and analysis system responsive to the needs of DoD and the Military Services, DoD determined it was important to create a single set of uniform data collection requirements rather than separate requirements for cases involving sexual assault charges. Thus, any standards must impose comparable data collection requirements for the full range of offenses handled by the military justice system, from failure to go to appointed place of duty to multiple premeditated murders.

DoD also considered Congress's mandate to adopt, "insofar as practicable, the best practices of Federal and State courts." The Department's research – including consultation with the National Center for State Courts – identified no federal or state criminal justice system that uses a data collection and analysis system resembling that proposed by the DAC-IPAD. The closest model DoD identified was the United States Sentencing Commission, which collects and evaluates data from only a very small segment of the criminal justice process that Article 140a covers.

Adopting a system resembling one currently in use offers two considerable benefits. First, the existing system would provide empirical experience concerning how – and whether – the proposed system works in practice. The National Center for State Courts identified some costly attempts to establish statewide systems that ultimately failed. In fact, the experts at the



National Center for State Courts warned DoD that adopting a large centralized system appears to heighten the risk of failure over an extended period of time. Second, adopting a system comparable to an existing one allows for an assessment of the likely personnel and fiscal demands required to establish and operate the system.

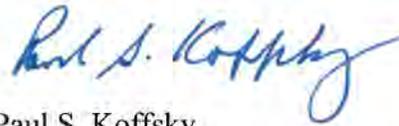
In the absence of a comparable system currently in effect, DoD attempted to extrapolate the likely personnel requirements to operate a system that collected documents and then employed a staff at a centralized location to extract the information suggested by the DAC-IPAD's proposal, as well as other information that DoD believes is important to track. In Fiscal Year 2017, the four Military Services in DoD tried a total of 1,980 general, special, and summary courts-martial and imposed 41,726 nonjudicial punishments. If each of those cases generated an average of seven documents that were required to be collected and then reviewed for data to input, 305,942 documents would have had to be processed. That is comparable to the number of documents received and inputted by the United States Sentencing Commission (310,000 in Fiscal Year 2017), which maintains a staff of 50 employees in its Office of Research and Data to perform its data inputting and analysis functions. For comparison purposes, there are only 44 authorized attorney billets in the DoD Office of General Counsel. But there is reason for concern that the actual personnel demand would exceed 50. For each case, the United States Sentencing Commission collects and processes five documents with a high degree of uniformity (the indictment or other charging document; the presentence report; the judgment and commitment order; the plea agreement if there is one; and the "Statement of Reasons" form). The documents necessary to process under the DAC-IPAD proposal would be far less uniform, creating a significant likelihood that the time required to extract the required information from each of those documents would exceed the average time a United States Sentencing Commission employee spends extracting information from a document. If the number of individuals hired for data input purposes proved inadequate, there would be a high risk of failure for what, under the DAC-IPAD proposal, would be "the sole source of military justice data for all other organizations in DoD and for external entities." Adopting the proposed requirements without a thorough understanding of the resulting personnel and fiscal demands, therefore, was deemed inadvisable.

Finally, some of the Military Services expressed concern that the DAC-IPAD proposal would interfere with their ability to assess changes in the military justice system over time and conduct other analyses of military justice data. Some Military Services feared it would prove difficult to track patterns over time because data from before December 23, 2020 would reside in their own databases while data after that date would reside in the centralized database.

The sentencing data collection that the Military Justice Review Panel is required to conduct may provide an opportunity to assess on a smaller scale the personnel and fiscal demands that a system like that proposed by the DAC-IPAD would create. Once such information is obtained, it may be appropriate for DoD to reconsider the DAC-IPAD's proposal with a better understanding of the resources it would require and the likelihood of its success or failure.

Again, I am grateful for the recommendations of the DAC-IPAD and I assure the Committee that its recommendations were valued, were carefully considered, and influenced the standards DoD ultimately promulgated.

Sincerely,



Paul S. Koffsky  
Senior Deputy General Counsel/Deputy General  
Counsel (Personnel & Health Policy)

Enclosure:  
As stated



**APPENDIX L.  
DECEMBER 17, 2018, MEMORANDUM FROM  
MR. PAUL C. NEY, JR., DOD GENERAL COUNSEL, TO  
SECRETARIES OF THE MILITARY DEPARTMENTS  
PROMULGATING ARTICLE 140a STANDARDS AND CRITERIA**





GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE

1600 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1600

DEC 17 2018

GENERAL COUNSEL

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS

SUBJECT: Uniform Standards and Criteria Required by Article 140a, Uniform Code of Military Justice (UCMJ)

Pursuant to Article 140a of the UCMJ, 10 U.S.C. § 940a, as enacted by section 5504 of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2961, and DoD Directive 5145.01, I prescribe the attached uniform standards and criteria for the military justice system, to be implemented no later than December 23, 2020.

I am forwarding a copy of these uniform standards and criteria to the Judge Advocate General of the Coast Guard for adoption with regard to that Military Service as deemed appropriate by the applicable decision makers.



Paul C. Ney, Jr.  
DoD General Counsel

cc:

Judge Advocates General of the Military Departments  
Staff Judge Advocate to the Commandant of the Marine Corps  
Judge Advocate General of the Coast Guard



## **Military Justice Case Management, Data Collection, and Accessibility Standards**

### **I. Case Management System**

A. Each Military Service will maintain and operate a military justice case processing and management system. Each system will track every case opened by military law enforcement in which a Service member is identified as a subject until completion through the final disposition within the military justice system, to include direct appellate review. Each military justice case processing and management system will maintain all data collected indefinitely to ensure complete and accurate reporting. Each military justice case processing and management system must ensure accessibility by trial counsel, appellate government counsel, staff judge advocates, military judges, appellate judges, and Service clerks of court to ensure data fields are updated throughout the military justice process.

B. Two or more Military Services may operate a military justice case processing and management system in conjunction with each other.

### **II. Collection and Analysis of Data Concerning Substantive Offenses and Procedural Matters**

A. Each military justice case processing and management system will be capable of collecting information in accordance with the Data Points and Uniform Definitions set out in Appendix A.

B. Each Military Service is responsible for implementing standards to ensure the data entry is complete and accurate. To ensure the collection of uniform data across the Services, each case processing and management system will identify criminal offenses by the appropriate Defense Incident-Based Reporting System (DIBRS) Codes. To ensure the collection of uniform data concerning race and ethnicity, the definitions of race and ethnicity as established by the Office of Management and Budget Statistical Policy Directive No. 15 (OMB 15), Race and

Ethnic Standards for Federal Statistics and Administrative Reporting, will be applied by each military justice case processing and management system. A Military Service may elect to have its military justice case processing and management system capture expanded ethnic or racial categories; however, for reporting purposes, expanded categories will aggregate to those established by OMB 15.

### III. Distribution of Records of Trial Within the Military Justice System

A. A request by the accused for a copy of the recording of all open sessions of the court-martial and copies of or access to the evidence admitted at the court-martial will be submitted to the Trial Counsel. All copies of the recordings and/or exhibits will be made available to the accused or defense counsel as soon as practicable after a valid request is received.

B. A request by a victim as defined by Rule for Courts-Martial 1106A(b)(2) for a copy of the recording of all open sessions of the court-martial and copies of or access to the evidence admitted at the court-martial will be submitted to the Trial Counsel. All copies of the recordings and/or exhibits will be made available to the victim or the victim's counsel as soon as practicable after a valid request is received.

C. The accused and any victim as defined in Rule for Courts-Martial 1112(e) will be notified of the opportunity to obtain a copy of the certified record of trial within 10 days of the certification. Each Military Service will implement procedures to ensure adequate notification is provided in writing. Each Military Service will implement procedures to ensure that copies of certified records released to accused or victims do not contain any sealed exhibits, classified information, or information from closed court sessions.

#### IV. Public Access to Military Justice Docket Information, Filings, and Records

A. To the greatest extent practicable, military justice docket information, filings, and records should be no less accessible to the public than comparable information and documents from the Federal civilian criminal justice system. However, an important legal distinction exists between the military justice system and the federal civilian criminal justice system: the Privacy Act applies to the former but not to the latter. Privacy Act concerns are directly relevant to the manner in which information and documents from the military justice system may be made available to the public.

B. Accordingly, below I issue two alternative uniform standards for public access to military justice docket information, filings, and records. The first set of uniform standards will apply if, as determined by the General Counsel of the Department of Defense, the law is changed to exempt from the Privacy Act the release of military justice docket information, filings, and records. Absent such a determination, the second set of uniform standards will apply.

1. Standards Applicable If the General Counsel of the Department of Defense Determines the Law Is Changed to Exempt from the Privacy Act the Release of Military Justice Docket Information, Filings, and Records

a. The Secretaries of the Military Departments will prescribe procedures to protect from disclosure classified documents, privileged documents, documents filed under seal, and other documents protected by a court order. Procedures shall be created for all cases at the trial level and before the Courts of Criminal Appeals. These standards do not impose any requirement on the Court of Appeals for the Armed Forces.

b. The Secretaries of the Military Departments will prescribe procedures for the redaction of dockets, filings, and court records to remove the following information from the documents:

- i. all social security numbers;
- ii. all taxpayer identification numbers;
- iii. birthdates;
- iv. minors' names;
- v. victims' names;
- vi. all financial account numbers;
- vii. other sensitive information as determined by the Secretaries of

the Military Departments.

c. The Secretaries of the Military Departments will prescribe standards to maintain the dockets, filings, and court records on a central publicly accessible website for their respective trial judiciaries. Each Military Department's Court of Criminal Appeals will maintain its docket, filings, and court records on a publicly accessible website.

d. For the purposes of this document and the standards set forth to implement Article 140a across all Military Departments, the following definitions are provided:

i. Docket – includes information concerning each case docketed with the trial or appellate courts of each Military Department.

(a). The trial court docket includes the name of the case, the location of the hearing, the type of hearing, the military judge presiding over the hearing, and the counsel assigned to the case. The docket will include hearings only after the case has been referred to a court-martial; Article 32 preliminary hearings are not required to be published in this docket.

(b). The appellate court docket includes a list of all cases pending before the court and an oral argument schedule to include the name of the case, the location of the hearing, the type of hearing, and panel assignment.

ii. Filings – consists exclusively of all motions, notices, petitions, and requests submitted to a trial court or a Court of Criminal Appeals.

iii. Court Records – consists exclusively of the charge sheet, convening order(s), court rulings, Statement of Trial Results, Convening Authority’s Action, Entry of Judgment, and appellate court orders and opinions. Court records do not include the Article 32 Preliminary Hearing Report, a recording of any court session, or any transcript of the proceedings.

e. All dockets, filings, and court records will be made available to the public on a website as soon as practicable.

f. The Military Judge or Court of Criminal Appeals will make the final determination on any request for a protective order to prevent the public disclosure of a filing or court record. The protective order will be published to the public on a website with such redactions as are appropriate.

**B. Standards Applicable If the General Counsel of the Department of Defense Does Not Determine the Law Is Changed to Exempt from the Privacy Act the Release of Military Justice Docket Information, Filings, and Records**

1. The Secretaries of the Military Departments will implement procedures to ensure all dockets, filings, and court records at the trial and Court of Criminal Appeals levels are redacted to comply with the Privacy Act. These standards do not impose any requirement on the Court of Appeals for the Armed Forces.

2. The Secretaries of the Military Departments will prescribe standards to maintain the dockets, filings, and court records on a central publicly accessible website for their respective trial judiciaries. Each Military Department's Court of Criminal Appeals will maintain its docket, filings, and court records on a publicly accessible website.

3. The Secretaries of the Military Departments will prescribe standards for training the individuals redacting these documents to ensure compliance with the Privacy Act.

4. Each Secretary of a Military Department will provide for the publication of dockets, filings, and court records that are properly redacted in compliance with the Privacy Act and posted on a website that is accessible by the public. Dockets will be updated on an ongoing basis. Filings and court records will be published as soon as practicable after the certification of the record of trial (at the trial court level) or after the Court of Criminal Appeals decision (at the appellate level).

5. For the purposes of this document and the standards set forth to implement Article 140a across all Military Departments, the following definitions are provided:

a. Docket – includes information concerning each case docketed with the trial or appellate courts of each Military Department.

i. The trial court docket includes the name of the case, the location of the hearing, the type of hearing, the military judge presiding over the hearing, and the counsel assigned to the case. The docket will include hearings only after the case has been referred to a court-martial; Article 32 preliminary hearings are not required to be published in this docket.

ii. The appellate court docket includes a list of all cases pending before the court and an oral argument schedule to include the name of the case, the location of the hearing, the type of hearing, and panel assignment.

b. Filings – consists exclusively of all motions, notices, petitions, and requests submitted to a trial court or a Court of Criminal Appeals.

c. Court Records – consists exclusively of the charge sheet, convening order(s), court rulings, Statement of Trial Results, Convening Authority’s Action, Entry of Judgment, and appellate court orders and opinions. Court records do not include the Article 32 Preliminary Hearing Report, a recording of any court session, or any transcript of the proceedings.

**Appendix A**  
**Data Points & Uniform Definitions for Collection by the Services**

Data Point	Uniform Definition
<b>Basic Data (Subject/Accused)</b>	
1. Last name	n/a
2. First name	n/a
3. Middle initial	n/a
4. Pay grade	-E-1 -E-2 -E-3 -E-4 -E-5 -E-6 -E-7 -E-8 -E-9 -W-1 -W-2 -W-3 -W-4 -W-5 -O1E -O2E -O3E -O-1 -O-2 -O-3 -O-4 -O-5 -O-6 -O-7+ -Cadet -Midshipman -Civilian
5. SSN or DOD ID No.	####
6. Date of birth	Format (MM/DD/YYYY)
7. Sex	-M -F
8. Ethnicity	-Hispanic or Latino -Not Hispanic or Latino
9. Race	-American Indian/Alaska Native -Asian -Black or African American -Native Hawaiian or Other Pacific Islander -White -Other

Data Point	Uniform Definition
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10. Branch of Service	<ul style="list-style-type: none"> <li>-Army</li> <li>-Air Force</li> <li>-Marine Corps</li> <li>-Navy</li> <li>-Coast Guard</li> <li>-Army National Guard</li> <li>-Air National Guard</li> <li>-USAR</li> <li>-USNR</li> <li>-USAFR</li> <li>-USMCR</li> <li>-USCGR</li> <li>-Other</li> <li>-N/A</li> </ul>
11. Pay entry date/Pay date	Format (MM/DD/YYYY)
<b>Investigation</b>	
12. Investigating entity	<ul style="list-style-type: none"> <li>-Chain of command</li> <li>-Military Criminal Investigative Organization</li> <li>-Military police</li> <li>-Civilian</li> <li>-Foreign</li> <li>-N/A</li> </ul>
13. Investigation number	Service dependent
14. Date investigation opened	Format (MM/DD/YYYY)
15. Date of earliest offense	Format (MM/DD/YYYY)
16. Date earliest offense reported/discovered	Format (MM/DD/YYYY)
17. Offenses investigated related to the accused	DIBRS code (DODM 7730.47 volume 2)
<b>Victim of Sexual Assault &amp; Domestic Violence</b>	
18. Does any charged offense involve a victim as defined by DoD Directive 1030.1?	<ul style="list-style-type: none"> <li>-Yes</li> <li>-No</li> </ul>
19. Number of victims: [questions 20-XX, should be captured for each victim]	##
20. Identification of victim	Initials of first & last names
21. Sex of victim:	<ul style="list-style-type: none"> <li>-M</li> <li>-F</li> </ul>
22. Status of victim:	<ul style="list-style-type: none"> <li>-Military</li> <li>-Military-spouse</li> <li>-Civilian-spouse</li> <li>-Civilian-dependent</li> <li>-Civilian-Department/Service employee</li> <li>-Civilian-non-Department/Service employee</li> <li>-Other</li> <li>-Unknown</li> </ul>

## Data Point

## Uniform Definition

23. Is victim a victim of domestic violence, as defined by Enclosure 2 of DoDI 6400.06?	-Yes -No
a. If "Yes," the victim's relation to the accused is:	-Current spouse -Former spouse -Person with whom the accused shares a child in common -Current intimate partner with whom the accused shares a common domicile -Former intimate partner with whom the accused shared a common domicile
24. VWAP notifications & elections (captured for each qualifying victim)	Date served and explained
a. DD Form 2701 – Initial Information for Victims and Witnesses of Crime	Format (MM/DD/YYYY)
b. DD Form 2702 – Court-Martial Information for Victims and Witnesses of Crime	Format (MM/DD/YYYY)
c. DD Form 2703 – Post-trial Information for Victims and Witnesses of Crime	Format (MM/DD/YYYY)
d. DD Form 2704 – Victim/Witness Certification and Election Concerning Prisoner Status	Format (MM/DD/YYYY)
e. Victim election to be notified under DD Form 2704	-Yes -No
f. DD Form 2704-1 – Victim Election of Post-trial Rights	Format (MM/DD/YYYY)
g. Victim election to be notified under DD Form 2704-1	-Yes -No
25. Was the victim notified of the opportunity for SVC services?	-Yes -No -N/A
a. Has an SVC been provided?	-Yes -No, victim requested SVC -No, victim declined -N/A
26. Did the victim request an expedited transfer?	-Yes -No -N/A
a. If "Yes," action on the expedited transfer:	-Approved -Disapproved
27. Was the victim advised, in accordance with Section 534(b), FY15 NDAA, of victim's right to submit a preference regarding exercise of civilian or military jurisdiction over offenses allegedly committed in the United States?	-Yes -No -N/A

**Data Point**

**Uniform Definition**

a. Victim jurisdiction preference:	-Military -Civilian -N/A
<b>Pretrial</b>	
<i>Pretrial restraint/confinement</i>	
28. Has pretrial restraint/confinement of the accused been imposed?	-Yes -No
a. Type of pretrial restraint/confinement imposed:	-Conditions on liberty -Restriction in lieu of arrest -Arrest -Confinement
b. If "yes," date imposed:	Format (MM/DD/YYYY)
c. Date pretrial restraint/confinement terminated:	Format (MM/DD/YYYY)
<i>Referral of Charges</i>	
29. Earliest referral date	Format (MM/DD/YYYY)
30. Was there an additional referral?	-Yes -No
a. If "yes," date of additional referral:	Format (MM/DD/YYYY)
31. Offense(s) charged:	DIBRS code (See DODM 7730.47 volume 2)
32. Does any offense involve alcohol and/or illegal use of drugs by the accused?	-N/A -Alcohol only -Illegal use of drugs only -Alcohol AND illegal use of drugs
33. Does any offense involve alcohol and/or illegal use of drugs by a victim?	-N/A -Alcohol only -Illegal use of drugs only -Alcohol AND illegal use of drugs
34. Was a firearm utilized in the commission of an offense?	-Yes -No
<i>Pre-referral judicial proceedings (R.C.M. 309)</i>	
35. Was a pre-referral investigative subpoena requested? If yes, then	-Yes -No
a. Was request granted?	-Yes -No
b. Action by individual subject to subpoena:	-Comply -Seek relief
c. Judge action on a request for relief:	-Ordered to comply -Modify -Quash subpoena
36. Was a pre-referral warrant or order for wire or electronic communications requested?	-Yes -No
a. Was request granted?	-Yes -No
b. Action by individual/service provider subject to warrant or order	-Comply -Seek relief

**Data Point**

**Uniform Definition**

c. Judge action on request for relief:	-Order to comply -Modify -Quash subpoena
<b>Action by Chain of Command</b>	
37. Action by commander not authorized to convene courts-martial (R.C.M. 402). If commander takes separate action on individual preferred Specifications, input must reflect data for each Specification.	-N/A -Dismissed -Forwarded to superior commander for disposition -N/A
a. Date of action	Format (MM/DD/YYYY)
38. Action by commander exercising summary court-martial jurisdiction (R.C.M. 403). If commander takes separate action on individual preferred Specifications, input must reflect data for each Specification.	-N/A -Dismissed -Dismissed and forwarded to subordinate commander for disposition -Forwarded to subordinate commander for disposition - Referred to summary court-martial -Preliminary hearing directed under R.C.M. 405 and Article 32
a. Date of action	Format (MM/DD/YYYY)
39. Action by commander exercising special court-martial jurisdiction (R.C.M. 404). If commander takes separate action on individual preferred Specifications, input must reflect data for each Specification.	-N/A -Dismissed -Dismissed and forwarded to subordinate commander for disposition -Forwarded to subordinate commander for disposition -Forwarded to superior commander for disposition -Referred to summary court-martial -Referral to an Article 16(c)(2)(A) Special Court-Martial -Referral to Special Court-Martial -Preliminary hearing directed under R.C.M. 405 and Article 32
40. Date of action:	Format (MM/DD/YYYY)
<b>Article 32 Preliminary Hearing (R.C.M. 405)</b>	
41. Was an Article 32 preliminary hearing ordered?	-Yes -No
42. Did appointing authority grant waiver of Article 32 preliminary hearing?	-Yes -No -N/A
a. Date appointing authority acted on waiver request:	Format (MM/DD/YYYY)
43. Date of Article 32 hearing:	-Format (MM/DD/YYYY) -N/A

Data Point	Uniform Definition
44. Were all victims, as defined by R.C.M. 405(g)(1), provided notice of the preliminary hearing?	-Yes -No -N/A
45. Did any victim, as defined by R.C.M. 405(g)(1), testify at the Article 32 preliminary hearing?	-Yes -No -N/A
46. Did any victim file a petition for writ of mandamus with the Court of Criminal Appeals pursuant to Article 6(b), UCMJ?	-Yes -No
47. Action by Court of Criminal Appeals:	-Relief Granted -Relief Denied
48. Date report submitted by Preliminary Hearing Officer (PHO):	Format (MM/DD/YYYY)
49. PHO determination of whether convening authority has court-martial jurisdiction over the accused:	-Yes -No
50. For each Specification, PHO determination of the following:	
a. Is there a recommendation to modify the Specification?	-Yes -No
b. Does the convening authority have court-martial jurisdiction over the offense?	-Yes -No
c. Does the Specification allege an offense?	-Yes -No
d. Does probable cause exist to believe the accused committed the offense?	-Yes -No
51. Did the PHO determine probable cause existed to believe the accused committed additional, uncharged offenses?	-Yes -No
a. If yes, provide offense(s)	DIBRS code
52. Recommendation as to disposition of the case:	-No action -Administrative action -Non-judicial punishment -Referral to Summary Court-Martial -Referral to an Article 16(c)(2)(A) Special Court-Martial -Referral to Special Court-Martial -Referral to General Court-Martial
<i>SJA Pretrial Advice (R.C.M. 406)</i>	
53. Is Article 34, UCMJ, SJA advice required? If "yes," system must capture the following conclusions by the SJA for each Specification:	-Yes -No
a. Does the Specification allege an offense under the UCMJ?	-Yes -No
b. Is there probable cause to believe the accused committed the offense?	-Yes -No

## Data Point

## Uniform Definition

c. Did the SJA recommend dismissal of the specification?	-Yes -No
d. Does the convening authority have court-martial jurisdiction over the offense?	-Yes -No
54. SJA conclusion of whether the convening authority has court-martial jurisdiction over the accused:	-Yes -No
55. SJA disposition recommendation	-No action -Administrative action -Non-judicial punishment -Referral to court-martial
56. Date of Article 34, UCMJ, SJA advice	Format (MM/DD/YYYY)
<i>Referral – Action by the GCMCA</i>	
57. Name of Command/GCMCA	Look up by Unit Identification Code
58. Disposition of each Charge and Specification (R.C.M. 407)	-Dismissed -Dismissed and forwarded to subordinate commander for disposition -Forwarded to subordinate commander for disposition -Forwarded to superior commander for disposition -Referred to court-martial
59. When referred to court-martial:	
a. Level of court-martial to which charges were referred:	Dropdown: -Summary Court-Martial - Article 16(c)(2)(A) Special Court-Martial -Special Court-Martial -General Court-Martial
b. If referral is to a Special Court-Martial, did the convening authority consult with a judge advocate, iaw R.C.M. 406A?	-Yes -No
60. Was elevated review by the next higher GCMCA triggered? (A situation in which the SJA and GCMCA both concur that a sex-related offense, as defined by § 1744 of the FY 2014 NDAA and § 541 of the FY 2015 NDAA, should not be referred to trial)	-Yes -No
a. If yes, decision by reviewing GCMCA:	-Referred charges to court-martial -The decision of the subordinate GCMCA was upheld
b. Date of decision by reviewing GCMCA:	Format (MM/DD/YYYY)
61. Was elevated review by the Secretary of the Military Department/Commandant of the USCG triggered? (Either: 1. The SJA recommends referral and the GCMCA declines referral; OR 2. The SJA and GCMCA both concur with non-referral, but the Service Chief Prosecutor seeks Secretarial/Commandant of USCG review when the non-	-Yes -No

Data Point	Uniform Definition
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referral decision involves a sex-related offense, as defined by § 1744 of the FY 2014 NDAA and § 541 of the FY 2015 NDAA)	
a. Decision by Secretary of the Military Department/Commandant of the USCG:	-Referred charges to court-martial -The decision of the subordinate GCMCA was upheld
b. Date of decision by Secretary of the Military Department/Commandant of the USCG:	Format (MM/DD/YYYY)
<i>Plea Agreement (R.C.M. 705)</i>	
62. Is there a plea agreement?	-Yes -No
63. Date plea agreement approved:	Format (MM/DD/YYYY)
64. Does the plea agreement contain an Offer to Plead Guilty? If yes, the following shall be answered for each Charge and Specification referred to court-martial	-Yes -No
a. Plea of the accused	-Plea of Guilty -Plea of Guilty to LIO or other offense -Plea of Not Guilty -Withdrawn and/or Dismissed
b. LIO or other offense– Article, UCMJ	DIBRS code
65. If applicable, was the victim, as defined by R.C.M. 705(e)(3)(B), provided the opportunity to submit views concerning the plea agreement?	-Yes -No -N/A
a. Did victim submit views concerning plea agreement?	-Yes -No
b. Date victim submitted views concerning plea agreement:	Format (MM/DD/YYYY)
66. Is there an agreed-upon composition for sentencing?	-Members -Judge -Magistrate judge -No forum agreed upon
67. Is there an agreement to refer to a particular forum?	-Summary Court-Martial - Article 16(c)(2)(A) Special Court-Martial -Special Court-Martial -None
<i>Enlisted Separation/Officer Resignation in Lieu of Court-Martial</i>	
68. Was a request for Separation/Resignation in Lieu of Court-Martial submitted?	-Yes -No
69. Was request approved?	-Yes -No
a. Date request approved/denied:	Format (MM/DD/YYYY)
70. Characterization of Service	Dropdown: -Honorable -General, Under Honorable Conditions -Other than Honorable

**Data Point**

**Uniform Definition**

<i>Inquiry Into Mental Capacity/Mental Responsibility of the Accused (R.C.M. 706)</i>	
71. R.C.M. 706 inquiry requested?	-Yes -No
72. R.C.M. 706 inquiry request approved?	-Yes -No
a. Date R.C.M. 706 inquiry request approved/denied:	Format (MM/DD/YYYY)
73. R.C.M. 706 inquiry completed date:	Format (MM/DD/YYYY)
74. Determination of the R.C.M. 706 inquiry:	
a. As a result of the accused suffering from a severe mental disease or defect, was the accused unable to appreciate the nature and quality or wrongfulness of his or her conduct?	-Yes -No
b. As a result of a present mental disease or defect, is the accused unable to understand the nature of the proceedings against the accused or to conduct or cooperate intelligently with the defense?	-Yes -No
75. The court found the accused incompetent to stand trial pursuant to R.C.M. 909	-Yes -No -N/A
<b>Trial</b>	
<i>Forum (R.C.M. 903)</i>	
76. Composition of the Court for merits phase:	-Members -Officer members at the accused's election - Members with 1/3 enlisted representation at the accused's election - Military Judge alone - Magistrate judge
<i>Pleas (R.C.M. 910)</i>	
77. Plea(s) of the accused to each Charge and Specification:	-Guilty -Not guilty of an offense as charged, but guilty of a named lesser included offense (LIO) or other offense -Guilty with exceptions, with or without substitutions, not guilty of the exceptions, but guilty of the substitutions, if any -Not guilty
a. In the case of guilty of LIO or other offense:	DIBRS Code
<i>Findings (R.C.M. 918)</i>	
78. Prior to findings, whether the convening authority caused any of the Charges or Specifications to be withdrawn and or dismissed. For each Charge and Specification, as applicable:	-Withdrawn -Withdrawn and dismissed

## Data Point

## Uniform Definition

Data Point	Uniform Definition
79. Mistrial (R.C.M. 915):	-Yes -No
a. If mistrial, date of mistrial:	Format (MM/DD/YYYY)
80. Finding as to each Specification:	-Guilty -Not guilty of an offense as charged, but guilty of a named LIO or other offense -Guilty with exceptions, with or without substitutions, not guilty of the exceptions, but guilty of the substitutions, if any -Not guilty only by reason of lack of mental responsibility -Not guilty -Not guilty pursuant to R.C.M. 917 -Withdrawn and dismissed
81. In the case of guilty of LIO or other offense:	DIBRS code
82. Finding as to each Charge:	-Guilty -Not guilty, but guilty of violation of Article ____ -Not guilty by reason of lack of mental responsibility -Not guilty
83. Date of Findings:	Format (MM/DD/YYYY)
<i>Sentence (if applicable)</i>	
84. Composition of court for sentencing phase:	- Members - Officer members at the accused's election - Members with 1/3 enlisted representation at the accused's election - Military Judge alone - Magistrate judge
85. Did a crime victim of an offense of which the accused has been found guilty exercise his/her right to be heard at the presentencing (R.C.M. 1001(c)) relating to that offense? System must capture victim who exercised right.	-N/A -Yes -No
86. Date sentence adjudged:	Format (MM/DD/YYYY)
87. Sentence adjudged (if sentenced by military judge, for most offenses committed on or after 01 Jan 2019, those parts of the sentence adjudging a fine or confinement, subparagraphs e. and h. below, must be included for each Specification in which there was a finding of guilty). System must capture whether part of sentence was impacted by plea agreement.	
a. No punishment	-No punishment adjudged

## Data Point

## Uniform Definition

b. Reprimand:	-None adjudged; -Adjudged
c. Reduction to the grade of:	-None adjudged -E-1 -E-2 -E-3 -E-4 -E-5 -E-6 -E-7 -E-8
d. Forfeitures:	-None adjudged -\$ #####.## per month for ## months
e. Fine:	-None adjudged -\$ #####.##
f. Restriction to specific limits:	-None adjudged -## months -## days
g. Hard labor w/out confinement:	-None adjudged -## months -## days
h. Confinement:	-None adjudged -Life without eligibility for parole -Life -## years -## months -## days -FOR JUDGE ALONE: must include "To be served: consecutively or concurrently" if sentence is imposed for more than one specification
i. Punitive discharge:	-None adjudged -Bad-Conduct Discharge -Bad-Conduct Discharge (mandated) -Dishonorable Discharge -Dishonorable Discharge (mandated) -Dismissal
j. Death	-Yes -No
88. Days of pretrial confinement credit:	-## days
89. Days of judicially ordered credit	-## days
90. Total days of credit	-## days
91. Did the military judge recommend a suspension of any portion of the sentence?	-Yes -No
92. Did the Government submit a request to The Judge Advocate General to appeal the sentence either because	-Yes -No

Data Point	Uniform Definition
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it violates the law or is plainly unreasonable (Article 56(d), UCMJ, and R.C.M 1117)?	
a. Did any victim, as defined in R.C.M. 1001, submit matters for consideration to The Judge Advocate General	-Yes -No
b. Action by The Judge Advocate General on the Government's request to appeal the sentence:	-Denied -Approved
c. Decision by the Court of Criminal Appeals on Government's appeal of sentence:	-Denied -Set aside and remanded, sentence as adjudged is unlawful -Set aside and remanded, sentence as adjudged is plainly unreasonable
<b>Post-Trial</b>	
<i>Processing Related to Conviction and Sentence</i>	
93. Is DNA collection and submission required in accordance with 10 U.S.C. § 1565 and DoDI 5505.14?	-Yes -No
94. Is sex offender registration reporting required in accordance with appendix 4 to enclosure 2 of DoDI 1325.07?	-Yes -No
95. Did this case involve a crime of domestic violence as defined in enclosure 2 of DoDI 6400.06?	-Yes -No
96. Does this case trigger a firearm possession prohibition in accordance with 18 U.S.C. § 922?	-Yes -No
97. Date confinement ordered:	Format (MM/DD/YYYY)
98. Law enforcement agency notified of disposition for criminal indexing purposes:	-Yes -No
<i>Deferment and Waiver (R.C.M 1103)</i>	
99. Deferment:	-N/A -Deferment requested by accused, approved -Deferment requested by accused, denied -Deferment of confinement ordered without request from accused
100. Date of action on deferment:	Format (MM/DD/YYYY)
101. Did the convening authority waive automatic forfeitures by operation of Article 58(b), UCMJ?	-Yes -No
<i>Post-trial Motions and Proceedings (R.C.M. 1104)</i>	
102. Did any post-trial Article 39(a) sessions occur?	-Yes -No
103. Did any post-trial Article 39(a) impact any part of the findings or sentence?	-Yes -No
<i>Post-trial Action by the Convening Authority</i>	
104. Was a copy of the recording of all open sessions of the court-martial and copies/access to admitted evidence at the court-martial and the appellate exhibits provided,	-Yes -No

## Data Point

## Uniform Definition

upon request, to the accused or accused's counsel (R.C.M. 1106)?	
105. Accused action regarding submission of matters pursuant to R.C.M. 1106:	-Submitted -Expressly waived right to submit matters -Failed to submit matters
106. Was notice provided to all qualifying crime victims of their right to submit matters pursuant to R.C.M. 1106A (DD Form 2703)? Must capture by victim.	-N/A -Yes -No
107. Was a copy of the recording of all open sessions of the court-martial and copies/access to admitted evidence at the court-martial and the appellate exhibits provided, upon request, to any qualifying victim (R.C.M. 1106A)? System must capture each victim provided.	-Yes -No
108. Were matters submitted by crime victims pursuant to R.C.M. 1106A? System must capture each victim who submitted matters.	-N/A -Yes -No
109. Was any portion of the sentence suspended or remitted by the convening authority prior to the entry of judgment (R.C.M. 1107)?	-Yes -No
a. If the convening authority suspended any portion of the sentence, was that suspension later vacated (R.C.M. 1108)?	-Yes -No
b. Were any victims of the underlying offense(s) for which the probationer received a suspended sentence, or any victim of the alleged offense that is the subject of the vacation hearing, provided notice of the vacation hearing?	-N/A -Yes -No
110. Did the convening authority take any action impacting a finding of guilty, pursuant to R.C.M. 1110?	-Yes -No
111. Did the convening authority take any action impacting a portion of the sentence, pursuant to R.C.M. 1109 and/or 1110?	-Yes -No
<b><i>Entry of Judgment (R.C.M. 1111)</i></b>	
112. Date of Entry of Judgment:	Format (MM/DD/YYYY)
113. Date copy of Entry of Judgment provided to accused:	Format (MM/DD/YYYY)
114. Was a copy of the Entry of Judgment provided to any crime victim or crime victim's counsel, upon request?	-N/A -Yes -No
<b><i>Preparation and Forwarding to Court of Criminal Appeals</i></b>	
115. Type of Transcript Prepared (R.C.M. 1114):	-Transcript not prepared -Verbatim -Summarized
116. Date record of trial certified as containing all required contents pursuant to R.C.M. 1112(b):	Format (MM/DD/YYYY)
117. Date copy of certified record of trial was provided to accused or counsel (R.C.M. 1112(e)):	Format (MM/DD/YYYY)

Data Point	Uniform Definition
118. Date copy of certified record of trial was provided to victim, or counsel for the victim, of an offense of which the accused was charged if the victim testified during the proceedings (R.C.M. 1112(e)):	Format (MM/DD/YYYY)
119. Date copy of certified record of trial was provided to any victim, or counsel for any victim, named in a Specification of which the accused was charged, upon request, without regard to the findings of the court-martial (R.C.M. 1112(e)):	Format (MM/DD/YYYY)
120. Date certified record of trial forwarded to appropriate reviewing authority:	Format (MM/DD/YYYY)
<b><i>Waiver or Withdrawal of Appellate Review (R.C.M. 1115)</i></b>	
121. Date waiver or withdrawal submitted by accused:	-N/A -Format (MM/DD/YYYY)
122. Determination of review in cases in which the accused has waived or withdrawn appellate review (R.C.M. 1201):	
a. Whether the court had jurisdiction over the accused and the offense	-Yes -No
b. Whether each charge and specification stated an offense	-Yes -No
c. Whether the sentence was within the limits prescribed as a matter of law	-Yes -No
d. Date of review:	Format (MM/DD/YYYY)
<b><i>Review by The Judge Advocate General</i></b>	
123. For each certified record of trial received by The Judge Advocate General pursuant to R.C.M. 1201 and Article 69, UCMJ, the following determinations will be made:	
a. Whether the court had jurisdiction over the accused and the offense	-Yes -No
b. Whether each charge and specification stated an offense	-Yes -No
c. Whether the sentence was within the limits prescribed as a matter of law	-Yes -No
d. Whether the response contained any response to an allegation of error made in writing by the accused	-Yes -No
124. Was a remedy granted by The Judge Advocate General?	-Yes -No
125. Date accused notified of results of review conducted by The Judge Advocate General:	Format (MM/DD/YYYY)
a. Date application submitted for relief to The Judge Advocate General after final review (R.C.M. 1201(h))	-N/A - Format (MM/DD/YYYY)
126. Action by The Judge Advocate General upon an application for relief	-N/A -Relief granted -Relief denied

Data Point	Uniform Definition
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127. Was any remission or suspension of any unexecuted portion of any sentence by The Judge Advocate General pursuant to R.C.M. 1201(i) and Article 74, UCMJ?	-Yes -No
128. Date action taken by The Judge Advocate General under R.C.M. 1201(h) or (j) referred or submitted to or requested by the Court of Criminal Appeals (R.C.M. 1201(k)):	-N/A -Format (MM/DD/YYYY)
129. Action taken by the Court of Criminal Appeals upon such a referral or submission:	-Affirmed -Reversed
a. Date of Action by the Court of Criminal Appeals:	Format (MM/DD/YYYY)
<i>Review by Court of Criminal Appeals (R.C.M. 1203)</i>	
130. Court of Criminal Appeals determined accused lacks mental capacity to understand and to conduct or cooperate intelligently in the appellate proceedings:	-Yes -No
131. Action on findings of guilty, by Charge and its Specification(s)	-Affirmed -Affirmed in part, remanded -Affirmed in part, dismissed -Reversed
132. Action on sentence	-Affirmed -Affirmed in part, remanded -Affirmed in part, reassessed -Set aside, remanded -Set aside, reassessed
133. Date of opinion of the Criminal Court of Appeals	Format (MM/DD/YYYY)
134. Date accused notified of opinion of the Criminal Court of Appeals	Format (MM/DD/YYYY)
135. Decision of the Criminal Court of Appeals upon a request for reconsideration	-N/A -Denied -Granted
136. Decision upon reconsideration:	-N/A -Relief denied -Relief granted
137. Date of certification by The Judge Advocate General to the Court of Appeals for the Armed Forces (C.A.A.F.):	-N/A -Format (MM/DD/YYYY)
138. Date of petition by accused to C.A.A.F.:	-N/A -Format (MM/DD/YYYY)
139. Date record of trial forwarded to C.A.A.F.:	-N/A -Format (MM/DD/YYYY)
<i>Review by the Court of Appeals for the Armed Forces (R.C.M. 1204)</i>	
140. Action on petition by the accused for review:	-Denied -Granted
141. Date of action on petition:	Format (MM/DD/YYYY)
142. Opinion of the Court of Appeals for the Armed Forces (C.A.A.F.) regarding findings and sentence:	-Affirmed -Affirmed in part, remanded -Affirmed in part, dismissed -Reversed
143. Date of opinion of C.A.A.F.	Format (MM/DD/YYYY)

Data Point	Uniform Definition
144. Decision of C.A.A.F. upon a request for reconsideration	-N/A -Denied -Granted
a. Date of decision on request for reconsideration	Format (MM/DD/YYYY)
145. Decision of C.A.A.F. upon reconsideration	-Relief denied -Relief granted
a. Date of reconsideration decision:	Format (MM/DD/YYYY)
<i>Review by the Supreme Court of the United States (R.C.M. 1205)</i>	
146. Date petition for writ of certiorari filed:	-N/A -Format (MM/DD/YYYY)
147. Petition for writ of certiorari filed by:	-United States -Accused
148. Action on petition for writ of certiorari:	-N/A -Denied -Granted
149. Date of action on petition for writ of certiorari	Format (MM/DD/YYYY)
150. If certiorari was granted, was the C.A.A.F. opinion summarily vacated and remanded?	-Yes -No
151. If certiorari was granted, was briefing ordered?	-Yes -No
152. If certiorari was granted, was oral argument held?	-Yes -No
153. If certiorari was granted, the outcome was:	-Dismissed as improvidently granted -Affirmed -Affirmed in part, reversed in part -Reversed -Other
<i>Action by the Service Secretary</i>	
154. Upon final judgment involving the dismissal of a commissioned officer, cadet, or midshipmen, action by the Service Secretary or designee	-Approved and ordered executed -Substituted, for good cause, for an administrative form of discharge -Remitted -Suspended
a. Date of action on the dismissal	Format (DD/MM/YYYY)
<i>Action by the President of the United States</i>	
155. Action upon a sentence to death by the President	-Approved -Commutated to life without eligibility for parole -Commutated to life -Commutated to confinement for a term of years
a. Date of action by the President	Format (MM/DD/YYYY)

**APPENDIX M.  
JUNE 7, 2018, MEMORANDUM FROM MR. WILLIAM S.  
CASTLE, ACTING DOD GENERAL COUNSEL, TO DAC-IPAD  
CHAIR MARTHA S. BASHFORD REGARDING ASSESSMENT  
OF JPP RECOMMENDATIONS 54, 55, 57, 58, AND 60**





GENERAL COUNSEL

**GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE**  
1600 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1600

JUN 7 2018

MEMORANDUM FOR CHAIR, DEFENSE ADVISORY COMMITTEE ON  
INVESTIGATION, PROSECUTION AND DEFENSE OF  
SEXUAL ASSAULT IN THE ARMED FORCES

SUBJECT: Assessment of Judicial Proceedings Since Fiscal Year 2012 Amendments Panel  
Recommendations 54, 55, 57, 58 and 60

The Judicial Proceedings Since Fiscal Year 2012 Amendments Panel (JPP), a congressionally mandated federal advisory committee, concluded its work on October 9, 2017 with the issuance of its final report. Having reviewed the recommendations, I have determined that the Defense Advisory Committee on Investigation, Prosecution and Defense of Sexual Assault in the Armed Forces (DAC-IPAD)'s analysis of recommendations 54, 55, 57, 58 and 60 would be helpful, and respectfully request that the DAC-IPAD examine these recommendations.

I respectfully request that the DAC-IPAD include its analysis and findings, if any, of the aforementioned recommendations in its next annual report.

A handwritten signature in black ink, appearing to read "William S. Castle".

William S. Castle  
Acting



## APPENDIX N. DAC-IPAD PUBLIC MEETINGS, PREPARATORY SESSIONS, AND PRESENTERS

DAC-IPAD PUBLIC MEETINGS	
MEETING DATE AND LOCATION	TOPICS AND PRESENTERS
<p><b>DAC-IPAD PUBLIC MEETING 7</b></p> <p><b>April 20, 2018</b></p> <p>One Liberty Center 875 N. Randolph St. Arlington, Virginia</p>	<p><b>Best Practices for Case Management and Data Collection in Civilian Criminal Courts</b></p> <ul style="list-style-type: none"> <li>• Mr. Glenn Schmitt, Director, Office of Research and Data, U.S. Sentencing Commission</li> <li>• Dr. Allen Beck, Senior Statistical Advisor, Bureau of Justice Statistics, U.S. Department of Justice</li> <li>• Mr. Wendell Skidgel, Electronic Public Access Staff, Administrative Office of the U.S. Courts</li> <li>• Ms. Margaret Sheehan McCaleb, Project Director, Next Generation CM/ECF, Case Management Systems Office, Administrative Office of the U.S. Courts</li> </ul> <p><b>Current Capabilities of the Military Services’ Case Management and Data Collection Programs</b></p> <ul style="list-style-type: none"> <li>• Lieutenant Colonel Jason Coats, USA, Operations Branch Chief, Criminal Law Division, U.S. Army Office of the Judge Advocate General</li> <li>• Captain Michael Luken, USN, Director, U.S. Navy Trial Counsel Assistance Program</li> <li>• Major Jesse Schweig, USMC, U.S. Marine Corps Trial Counsel Assistance Program, Judge Advocate Division – Military Justice</li> <li>• Major Noel Horton, USAF, Executive Officer, U.S. Air Force Judiciary Directorate, Air Force Legal Operations Agency</li> <li>• Mr. Stephen McCleary, Senior Military Justice Counsel, U.S. Coast Guard Office of Military Justice</li> </ul> <p><b>Updates for the Committee from the Data, Case Review, and Policy Working Groups</b></p>

<b>DAC-IPAD PUBLIC MEETINGS</b>	
<b>MEETING DATE AND LOCATION</b>	<b>TOPICS AND PRESENTERS</b>
<p><b>DAC-IPAD PUBLIC MEETING 8</b></p> <p><b>July 20, 2018</b></p> <p>One Liberty Center 875 N. Randolph St. Arlington, Virginia</p>	<p><b>Military Services’ Perspectives on Best Practices for Implementing Article 140a, UCMJ, <i>Case management; data collection and accessibility</i></b></p> <ul style="list-style-type: none"> <li>• Ms. Janet Mansfield, Chief, Programs Branch, Criminal Law Division, U.S. Army Office of the Judge Advocate General</li> <li>• Major Wayne Shew, USMC, Deputy Branch Head, Military Justice, Judge Advocate Division, Headquarters, U.S. Marine Corps</li> <li>• Lieutenant Commander Jeff Pietrzyk, USN, Deputy Director, Code 20, Military Justice Directorate, U.S. Navy Office of the Judge Advocate General</li> <li>• Mr. John Hartsell, Associate Chief, U.S. Air Force Military Justice Division, Air Force Legal Operations Agency</li> <li>• Mr. Stephen McCleary, Senior Military Justice Counsel, U.S. Coast Guard Office of Military Justice</li> </ul> <p><b>Committee Deliberations on Best Practices for Implementing Article 140a, UCMJ, <i>Case management; data collection and accessibility</i></b></p> <p><b>Updates from the Staff Director, Data Working Group and Case Review Working Group</b></p> <p><b>Public Comment</b></p> <ul style="list-style-type: none"> <li>• Staff Sergeant Alyssa Rodriguez, USAF, Retired</li> <li>• Ms. Kylisha Boyd</li> <li>• Mr. Ryan Guilds, Attorney, Arnold &amp; Porter</li> </ul>

<b>DAC-IPAD PUBLIC MEETINGS</b>	
<b>MEETING DATE AND LOCATION</b>	<b>TOPICS AND PRESENTERS</b>
<p><b>DAC-IPAD PUBLIC MEETING 9</b></p> <p><b>September 7, 2018</b></p> <p>Telephonic Meeting</p> <p>Public Access: One Liberty Center 875 N. Randolph St. Arlington, Virginia</p>	<p><b>Committee Deliberations on Best Practices for Implementing Article 140a, UCMJ, <i>Case management; data collection and accessibility</i></b></p>
<p><b>DAC-IPAD PUBLIC MEETING 10</b></p> <p><b>October 19, 2018</b></p> <p>One Liberty Center 875 N. Randolph St. Arlington, Virginia</p>	<p><b>Effects of Sexual Assault Investigations on Accused Service Members</b></p> <ul style="list-style-type: none"> <li>• Ms. Kate Coyne, Criminal Defense Highly Qualified Expert, U.S. Marine Corps</li> </ul> <p><b>Perspectives of Civilian Sexual Assault Investigators</b></p> <ul style="list-style-type: none"> <li>• Sergeant Detective Kelley O’Connell, Boston, Massachusetts, Police Department</li> <li>• Sergeant Amanda Wise, Albuquerque, New Mexico, Police Department</li> <li>• Major Steve Hohman, Baltimore, Maryland, Police Department</li> </ul> <p><b>Case Review Working Group: Presentation and Deliberations on Initial Findings and Recommendations Related to Sexual Assault Investigative Case File Reviews</b></p> <p><b>Committee Deliberations on Expedited Transfer – Final Assessment</b></p> <p><b>Briefing and Committee Deliberations on Judicial Proceedings Panel Recommendations Referred to DAC-IPAD for Examination Related to Articles 32, 33, and 34 of the Uniform Code of Military Justice</b></p> <p><b>Briefing by Deputy Staff Director and Committee Deliberations Regarding FY19 NDAA Collateral Misconduct Study</b></p> <p><b>Data Working Group Update</b></p>

<b>DAC-IPAD PUBLIC MEETINGS</b>	
<b>MEETING DATE AND LOCATION</b>	<b>TOPICS AND PRESENTERS</b>
<p><b>DAC-IPAD PUBLIC MEETING 11</b></p> <p><b>January 25, 2019</b></p> <p>Doubletree by Hilton Crystal City 300 Army Navy Drive Arlington, Virginia</p>	<p><b>Effects of Sexual Assault Investigations on Accused Service Members</b></p> <ul style="list-style-type: none"> <li>• Lieutenant Colonel Joseph “Jay” Morse, USA, Retired</li> <li>• Colonel Doug James, USAF, Retired</li> <li>• Colonel David “Wil” Riggins, USA, Retired</li> </ul> <p><b>Data Working Group: Criminologist Presentation and Committee Deliberations on Sexual Assault Court-Martial Data</b></p> <p><b>Case Review Working Group: Criminologist Presentation and Committee Deliberations on Investigative Case File Review Data</b></p> <p><b>Committee Deliberations on the 2019 DAC-IPAD Annual Report, Draft 1.0</b></p>
<p><b>DAC-IPAD PUBLIC MEETING 12</b></p> <p><b>February 22, 2019</b></p> <p>Telephonic Meeting</p> <p>Public Access: One Liberty Center 875 N. Randolph St. Arlington, Virginia</p>	<p><b>Committee Deliberations on the 2019 DAC-IPAD Annual Report, Draft 2.0</b></p>

<b>CASE REVIEW WORKING GROUP PREPARATORY SESSIONS</b>	
<b>SESSION DATE AND LOCATION</b>	<b>TOPICS AND PRESENTERS</b>
<p><b>Case Review Working Group Preparatory Session 9</b></p> <p><b>March 6, 2018</b></p> <p>One Liberty Center 875 N. Randolph St. Arlington, Virginia</p>	<p><b>Perspectives of Service Prosecutors Regarding Sexual Assault Investigations</b></p> <ul style="list-style-type: none"> <li>• Lieutenant Colonel Rebecca Farrell, USA, Special Victim Prosecutor, U.S. Army</li> <li>• Lieutenant Commander Christopher Deerwester, USN, Senior Trial Counsel, U.S. Navy</li> <li>• Major Clare Hodge III, USMC, Deputy Branch Head, Military Justice Branch, U.S. Marine Corps</li> <li>• Colonel Christopher Brown, USAF, Chief, Military Justice Division, U.S. Air Force</li> <li>• Colonel Matthew Jarreau, USAF, Staff Judge Advocate, U.S. Air Force</li> <li>• Commander Cassie Kitchen, USCG, Chief, Military Justice and Command Advice, U.S. Coast Guard</li> </ul> <p><b>Perspectives of Military Investigators Regarding Sexual Assault Investigations</b></p> <ul style="list-style-type: none"> <li>• Special Agent Clarence Joubert III, Supervisory Special Agent and Program Manager for the Special Victim Unit, U.S. Army</li> <li>• Special Agent Lisa Medrano, Chief, Special Victim Team, U.S. Army</li> <li>• Mr. Robert Diederichsen, Program Management Analyst, U.S. Navy</li> <li>• Special Agent Stephanie Winters, Family and Sexual Violence Investigator, U.S. Navy</li> <li>• Special Agent Ernest Slatinsky, Chief of Quality Assessments, U.S. Air Force</li> <li>• Special Agent Marta Sivert, Chief, Violent Crimes, U.S. Air Force</li> <li>• Special Agent Barry Buck, Family and Sexual Violence Investigator, U.S. Coast Guard</li> </ul>

<b>CASE REVIEW WORKING GROUP PREPARATORY SESSIONS</b>	
<b>SESSION DATE AND LOCATION</b>	<b>TOPICS AND PRESENTERS</b>
<p><b>Case Review Working Group Preparatory Session 9</b></p> <p>(Continued)</p>	<p><b>Perspectives of Defense Counsel Regarding Sexual Assault Investigations</b></p> <ul style="list-style-type: none"> <li>• Major Jamal Rhinehardt, USA, Senior Defense Counsel, U.S. Army</li> <li>• Commander Chad Temple, USN, Director, Defense Counsel Assistance Program, U.S. Navy</li> <li>• Major John Boyer, USMC, Senior Defense Counsel, U.S. Marine Corps</li> <li>• Major Marquita Ricks, USAF, Senior Defense Counsel, U.S. Air Force</li> <li>• Commander Shanell King, USCG, Senior Defense Counsel, U.S. Coast Guard</li> </ul> <p><b>Deliberations on Potential April Presentations</b></p>
<p><b>Case Review Working Group Preparatory Session 10</b></p> <p><b>April 19, 2018</b></p> <p>One Liberty Center 875 N. Randolph St. Arlington, Virginia</p>	<p><b>Status Update on Case Review Project</b></p> <p><b>Discussion on Plan for 2019 Report</b></p> <p><b>Discussion on Briefing to the DAC-IPAD for April 20, 2018, Meeting</b></p> <p><b>Case Closure Disposition Categories Discussion</b></p>
<p><b>Case Review Working Group Preparatory Session 11</b></p> <p><b>July 19, 2018</b></p> <p>One Liberty Center 875 N. Randolph St. Arlington, Virginia</p>	<p><b>Status Update on Case Review Project</b></p> <p><b>Discussion on Selection of Issues for Assessment and Recommendations in the March 2019 Report</b></p> <p><b>Discussion on Checklist for Preferred Cases and Possible Speakers for October DAC-IPAD Public Meeting</b></p> <p><b>Discussion on Briefing to the DAC-IPAD for July 20, 2018, Meeting</b></p>

<b>CASE REVIEW WORKING GROUP PREPARATORY SESSIONS</b>	
<b>SESSION DATE AND LOCATION</b>	<b>TOPICS AND PRESENTERS</b>
<p style="text-align: center;"><b>Case Review Working Group Staff Briefing</b></p> <p style="text-align: center;"><b>July 25, 2018</b></p> <p>One Liberty Center 875 N. Randolph St. Arlington, Virginia</p>	<p><b>Briefings on the FBI National Incident-Based Reporting System (NIBRS) and the Department of Defense Incident-Based Reporting System (DIBRS)</b></p> <ul style="list-style-type: none"> <li>• Mr. Darrin A. Paul, Criminal Justice Information Services (CJIS) Division, Crime Statistics Management Unit, Federal Bureau of Investigation (FBI)</li> <li>• Mr. Scott E. Myers, CJIS Division, Crime Statistics Management Unit, FBI</li> <li>• Mr. Michael S. Wise, CJIS Division, Crime Statistics Management Unit, FBI</li> <li>• Ms. Shelley Verdejo, Director, Law Enforcement Policy, Office of the Under Secretary for Intelligence, U.S. Department of Defense</li> </ul>
<p style="text-align: center;"><b>Case Review Working Group Preparatory Session 12</b></p> <p style="text-align: center;"><b>August 23, 2018</b></p> <p>One Liberty Center 875 N. Randolph St. Arlington, Virginia</p>	<p><b>Department of Justice Criminal Charging Standards</b></p> <ul style="list-style-type: none"> <li>• Ms. Kate Buzicky, Assistant U.S. Attorney, District of Minnesota</li> </ul> <p><b>Staff Briefing to Working Group on NIBRS/DIBRS</b></p> <p><b>Planning for Working Group Presentation to DAC-IPAD at October 19, 2018, Meeting</b></p>
<p style="text-align: center;"><b>Case Review Working Group Preparatory Session 13</b></p> <p style="text-align: center;"><b>October 18, 2018</b></p> <p>One Liberty Center 875 N. Randolph St. Arlington, Virginia</p>	<p><b>Deliberation on Working Group’s Proposed Findings and Recommendations for Presentation to DAC-IPAD at October 19, 2018, Public Meeting</b></p>

<b>POLICY WORKING GROUP PREPARATORY SESSIONS</b>	
<b>SESSION DATE AND LOCATION</b>	<b>TOPICS AND PRESENTERS</b>
<p><b>Policy Working Group Preparatory Session 5</b></p> <p style="text-align: center;"><b>April 19, 2018</b></p> <p>One Liberty Center 875 N. Randolph St. Arlington, Virginia</p>	<p><b>Review Materials and Information on Article 140a, UCMJ</b></p> <p><b>Working Group Strategic Planning</b></p>
<p><b>Policy Working Group Preparatory Session 6</b></p> <p style="text-align: center;"><b>May 24, 2018</b></p> <p>One Liberty Center 875 N. Randolph St. Arlington, Virginia</p>	<p><b>Perspectives of DoD and Service Sexual Assault Prevention and Response (SAPR) Managers and Special Victims' Counsel Program Managers Regarding the Expedited Transfer Process and Policy</b></p> <ul style="list-style-type: none"> <li>• Ms. Diana Rangoussis, Senior Legislative and Policy Advisor, Sexual Assault Prevention and Response Office (SAPRO), U.S. Department of Defense (DoD)</li> <li>• Mr. Nathan Evans, Branch Chief, Sexual Harassment and Assault Response and Prevention (SHARP) Program Management &amp; Reporting, U.S. Army</li> <li>• Mr. Michael Slaven, Chief, Special Actions Branch, Human Resources Command, U.S. Army (telephonically)</li> <li>• Colonel Peter Yob, USA, U.S. Army Special Victims' Counsel Program Manager</li> <li>• Ms. Charlotte Cluverius, Deputy Chief of Staff, U.S. Navy Victims' Legal Counsel Program</li> <li>• Mr. Paul Rosen, Director, Sexual Assault Prevention and Response (SAPR) Program, U.S. Navy</li> <li>• Major Jessica Martz, USMC, Deputy Officer-in-Charge, U.S. Marine Corps Victims' Legal Counsel Organization</li> <li>• Ms. Erinn Izykowski, Section Head, Plans, Policy and Oversight, SAPR Program, U.S. Marine Corps</li> <li>• Colonel James Key III, USAF, Chief, U.S. Air Force Special Victims' Counsel Division</li> <li>• Ms. Kimberly Lahm, Policy Branch Chief, U.S. Air Force Interpersonal Self-Directed Violence Response Program</li> </ul>

<b>POLICY WORKING GROUP PREPARATORY SESSIONS</b>	
<b>SESSION DATE AND LOCATION</b>	<b>TOPICS AND PRESENTERS</b>
<p><b>Policy Working Group Preparatory Session 6</b></p> <p>(Continued)</p>	<ul style="list-style-type: none"> <li>• Ms. Shawn Blaine, Program Manager, SAPR Program, U.S. Coast Guard</li> <li>• Ms. Christa Specht, Chief, U.S. Coast Guard Member Advocacy Division</li> <li>• Lieutenant Amanda Styles, USCG, Central Assignment Coordinator, Aviation, Communication, and Prevention Career Fields, U.S. Coast Guard</li> <li>• Lieutenant Colonel Tyler Buckley, National Guard Bureau, Program Manager, National Guard Special Victims’ Counsel Program</li> <li>• Major Peter Williams, National Guard Bureau, Chief Policy Officer, National Guard Special Victims’ Counsel Program</li> </ul> <p><b>Perspectives of DoD and Service Sexual Assault Response Coordinators (SARCs) Regarding the Expedited Transfer Process and Policy</b></p> <ul style="list-style-type: none"> <li>• Ms. Bette Inch, Senior Victim Assistance Advisor, DoD SAPRO</li> <li>• Sergeant First Class Lisa Vaughn, USA, Lead SARC, U.S. Army, 1st Armored Division, Fort Bliss, TX</li> <li>• Ms. Kathleen Schofield, Lead Sexual Assault Response Coordinator, Naval Air Station Whidbey Island, WA</li> <li>• Ms. Elizabeth Johnson, Command Sexual Assault Response Coordinator, U.S. Marine Corps, 2nd Marine Logistics Group, Camp Lejeune, NC</li> <li>• Ms. Deborah Allen, Operations Branch Chief, U.S. Air Force SAPR Office, Falls Church, VA</li> <li>• Ms. Lisa Surette, Training Branch Chief, U.S. Air Force SAPR Office, Falls Church, VA</li> <li>• Mx. Angela Lakey, U.S. Coast Guard National Capital Region SARC, Washington, DC</li> </ul> <p><b>Perspectives of Defense Counsel Assistance Program Chiefs or Representatives Regarding the Expedited Transfer Process and Policy</b></p> <ul style="list-style-type: none"> <li>• Lieutenant Colonel Mary Ann Bowery, USA, Chief, U.S. Army Defense Counsel Assistance Program</li> <li>• Commander Chad Temple, USN, Director, U.S. Navy Defense Counsel Assistance Program</li> </ul>

<b>POLICY WORKING GROUP PREPARATORY SESSIONS</b>	
<b>SESSION DATE AND LOCATION</b>	<b>TOPICS AND PRESENTERS</b>
<p><b>Policy Working Group Preparatory Session 6</b></p> <p>(Continued)</p>	<ul style="list-style-type: none"> <li>• Major Christopher Capasso, USMC, Officer-in-Charge, U.S. Marine Corps Defense Counsel Assistance Program</li> <li>• Colonel Thomas Rodrigues, USAF, Chief, U.S. Air Force Trial Defense Division</li> <li>• Commander Shanell King, USCG, Chief, U.S. Coast Guard Defense Services</li> </ul> <p><b>Perspectives of Service Military Criminal Investigative Organizations Regarding the Expedited Transfer Process and Policy</b></p> <ul style="list-style-type: none"> <li>• Mr. Guy Surian, Deputy Chief, Investigative Operations, Investigative Policy and Criminal Intelligence, U.S. Army Criminal Investigation Command</li> <li>• Ms. T. L. Williams, Chief, Policy Branch, U.S. Army Criminal Investigation Command</li> <li>• Mr. Michael DeFamio, Division Chief, Family and Sexual Violence Division, Naval Criminal Investigative Service</li> <li>• Mr. Kevin Poorman, Associate Director, Criminal Investigations, U.S. Air Force Office of Special Investigations</li> <li>• Ms. Marta Sivert, Chief, Violent Crimes, U.S. Air Force Office of Special Investigations</li> <li>• Ms. Beverly Vogel, Sex Crimes Program Manager, U.S. Coast Guard Criminal Investigative Service</li> </ul>
<p><b>Policy Working Group Preparatory Session 7</b></p> <p><b>June 14, 2018</b></p> <p>One Liberty Center 875 N. Randolph St. Arlington, Virginia</p>	<p><b>Deliberations on Article 140a of the Uniform Code of Military Justice</b></p>

<b>POLICY WORKING GROUP PREPARATORY SESSIONS</b>	
<b>SESSION DATE AND LOCATION</b>	<b>TOPICS AND PRESENTERS</b>
<p><b>Policy Working Group Preparatory Session 8</b></p> <p><b>July 19, 2018</b></p> <p>One Liberty Center 875 N. Randolph St. Arlington, Virginia</p>	<p><b>Deliberations on Article 140a of the Uniform Code of Military Justice</b></p>
<p><b>Policy Working Group Preparatory Session 9</b></p> <p><b>September 18, 2018</b></p> <p>One Liberty Center 875 N. Randolph St. Arlington, Virginia</p>	<p><b>Review of Proposed Findings and Recommendations on DoD Expedited Transfer Policy</b></p>
<p><b>Policy Working Group Preparatory Session 10</b></p> <p><b>October 18, 2018</b></p> <p>One Liberty Center 875 N. Randolph St. Arlington, Virginia</p>	<p><b>Review of Information for Presentation to the DAC-IPAD on October 19, 2018</b></p>

<b>DATA WORKING GROUP PREPARATORY SESSION</b>	
<b>SESSION DATE AND LOCATION</b>	<b>TOPICS AND PRESENTERS</b>
<p><b>Data Working Group Preparatory Session</b></p> <p style="text-align: center;"><b>April 19, 2018</b></p> <p>One Liberty Center 875 N. Randolph St. Arlington, Virginia</p>	<p><b>Status of Criminologist Appointment</b></p> <p><b>Overview of RFI Process and Data Collection Topics of Interest</b></p> <p><b>Strategic Planning</b></p>

<b>DAC-IPAD PREPARATORY SESSION</b>	
<b>MEETING DATE AND LOCATION</b>	<b>TOPICS AND PRESENTERS</b>
<p><b>Committee Preparatory Session</b></p> <p style="text-align: center;"><b>January 24, 2019</b></p> <p>One Liberty Center 875 N. Randolph St. Arlington, Virginia</p>	<p><b>Presentation of DAC-IPAD Case Adjudication and Case Review Statistical Data by the Staff Criminologist, Dr. William Wells, and Review of Draft 1.0 of 2019 Annual Report</b></p>

## APPENDIX O. ACRONYMS AND ABBREVIATIONS

<b>AFOSI</b>	U.S. Air Force Office of Special Investigations
<b>AMJAMS</b>	Automated Military Justice Analysis & Management System
<b>ASA</b>	adult sexual assault
<b>BPD</b>	Baltimore Police Department
<b>C.A.A.F.</b>	Court of Appeals for the Armed Forces
<b>CCA</b>	Court of Criminal Appeals
<b>CDC</b>	child development center
<b>C.F.R.</b>	Code of Federal Regulations
<b>CGIS</b>	U.S. Coast Guard Investigative Service
<b>CID</b>	U.S. Army Criminal Investigation Command
<b>CJIS</b>	Criminal Justice Information Services
<b>CM/ECF</b>	Case Management/Electronic Court Filing System
<b>CO</b>	commanding officer
<b>CODIS</b>	Combined DNA Index System
<b>CONUS</b>	continental United States
<b>CRWG</b>	Case Review Working Group
<b>DAC-IPAD</b>	Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces
<b>DAVA</b>	domestic abuse victim advocate
<b>DD</b>	Department of Defense [form]
<b>DIBRS</b>	Defense Incident-Based Reporting System
<b>DNA</b>	deoxyribonucleic acid
<b>DoD</b>	Department of Defense
<b>DoDI</b>	Department of Defense Instruction
<b>DoD OIG</b>	Department of Defense Office of Inspector General

<b>DoD SAPRO</b>	Department of Defense Sexual Assault Prevention and Response Office
<b>DOJ</b>	Department of Justice
<b>DSAID</b>	Defense Sexual Assault Incident Database
<b>DWG</b>	Data Working Group
<b>e-ROT</b>	electronic record of trial
<b>ET</b>	expedited transfer
<b>FACA</b>	Federal Advisory Committee Act
<b>FAP</b>	Family Advocacy Program
<b>FBI</b>	Federal Bureau of Investigation
<b>FOIA</b>	Freedom of Information Act
<b>FY</b>	fiscal year
<b>GCM</b>	general court-martial
<b>IG</b>	inspector general
<b>IO</b>	investigating officer
<b>JAG</b>	judge advocate general
<b>JPP</b>	Judicial Proceedings Panel (Judicial Proceedings Since 2012 Amendments Panel)
<b>MCIO</b>	military criminal investigative organization
<b>MCM</b>	Manual for Courts-Martial
<b>MJRG</b>	Military Justice Review Group
<b>MOA</b>	memorandum of agreement
<b>N</b>	number
<b>NCIC</b>	National Crime Information Center
<b>NCIS</b>	Naval Criminal Investigative Service
<b>NDAA</b>	National Defense Authorization Act
<b>NIBRS</b>	National Incident-Based Reporting System
<b>NJP</b>	non-judicial punishment

<b>NS</b>	not (statistically) significant
<b>OCONUS</b>	outside the continental United States
<b>OIG</b>	Office of Inspector General
<b>OLS</b>	ordinary least squares
<b>OMB</b>	Office of Management and Budget
<b>PACER</b>	Public Access to Court Electronic Records
<b>PHO</b>	preliminary hearing officer
<b>PII</b>	personally identifiable information
<b>PSA</b>	penetrative sexual assault
<b>PWG</b>	Policy Working Group
<b>R.C.M.</b>	Rule or Rules for Courts-Martial
<b>RFI</b>	request for information
<b>RSP</b>	Response Systems Panel (Response Systems to Adult Sexual Assault Crimes Panel)
<b>SA</b>	sexual assault
<b>SADR</b>	Sexual Assault Disposition Report
<b>SANE</b>	sexual assault nurse examiner
<b>SAPR</b>	Sexual Assault Prevention and Response
<b>SAPRO</b>	Sexual Assault Prevention and Response Office
<b>SARC</b>	sexual assault response coordinator
<b>SIR</b>	Serious Incident Report
<b>SJA</b>	staff judge advocate
<b>SJAR</b>	Staff Judge Advocate Recommendation
<b>SPCM</b>	special court-martial
<b>SVC</b>	special victims' counsel
<b>UCMJ</b>	Uniform Code of Military Justice
<b>UCR</b>	Uniform Crime Report

<b>UNK</b>	unknown
<b>USA</b>	United States Army
<b>USAF</b>	United States Air Force
<b>USAO</b>	United States Attorney’s Office
<b>U.S.C.</b>	United States Code
<b>USCG</b>	United States Coast Guard
<b>USMC</b>	United States Marine Corps
<b>USN</b>	United States Navy
<b>VA</b>	victim advocate
<b>VLC</b>	victims’ legal counsel

## APPENDIX P. SOURCES CONSULTED

### 1. Legislative Sources

#### a. Enacted Statutes

5 U.S.C. App. §§ 1–16 (Federal Advisory Committee Act)

10 U.S.C. § 673 (Consideration of application for permanent change of station or unit transfer for members on active duty who are the victim of a sexual assault or related offense)

10 U.S.C. § 674 (Temporary administrative reassignment or removal of a member on active duty accused of committing a sexual assault or related offense)

10 U.S.C. §§ 801–946 (Uniform Code of Military Justice)

18 U.S.C. §§ 921 et seq. (Gun Control Act of 1968, as amended)

28 U.S.C. §§ 991 et seq. (Sentencing Reform Act provisions of the Comprehensive Crime Control Act of 1984)

34 U.S.C. § 41303 (Uniform Federal Crime Reporting Act of 1988)

National Defense Authorization Act for Fiscal Year 2013, Pub. L. No. 112-239, 126 Stat. 1632 (2012)

National Defense Authorization Act for Fiscal Year 2014, Pub. L. No. 113-66, 127 Stat. 672 (2013)

National Defense Authorization Act for Fiscal Year 2015, Pub. L. No. 113-291, 128 Stat. 3292 (2014)

National Defense Authorization Act for Fiscal Year 2016, Pub. L. No. 114-92, 129 Stat. 726 (2015)

National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016)

National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91, 131 Stat. 1283 (2017)

National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, 132 Stat. 1636 (2018)

#### b. Proposed Statutes

S. 1752, 113th Cong. (2013), Military Justice Improvement Act of 2013

### 2. Judicial Decisions

#### U.S. Court of Appeals for the Armed Forces

*United States v. Pease*, 75 M.J. 180 (C.A.A.F. 2016)

### **3. Rules and Regulations**

#### **a. Executive Orders**

Manual for Courts-Martial, United States (2016 edition)

Manual for Courts-Martial, United States (2019 edition)

#### **b. Rules and Regulations**

U.S. Code of Federal Regulations, Title 28, Part 20, Criminal Justice Information Systems

U.S. Code of Federal Regulations, Title 32, Part 105, Sexual Assault Prevention and Response Program Procedures

Federal Rules of Criminal Procedure

#### **c. Department of Defense**

Department of Defense Directive 5400.11, *Department of Defense Privacy Program* (October 29, 2014)

Department of Defense Instruction 1315.18, *Procedures for Military Personnel Assignments* (October 28, 2015) (Incorporating Change 2, July 23, 2018)

Department of Defense Instruction 5505.03, *Initiation of Investigations by Defense Criminal Investigative Organizations* (March 24, 2011) (Incorporating Change 2, February 13, 2017)

Department of Defense Instruction 5505.11, *Fingerprint Card and Final Disposition Report Submission Requirements* (July 21, 2014) (Incorporating Change 2, March 30, 2017)

Department of Defense Instruction 5505.18, *Investigation of Adult Sexual Assault in the Department of Defense* (March 22, 2017) (Incorporating Change 2, January 31, 2019)

Department of Defense Instruction 6495.02, *Sexual Assault Prevention and Response (SAPR) Program Procedures* (March 28, 2013) (Incorporating Change 3, May 24, 2017)

Department of Defense Instruction 7730.47, *Defense Incident-Based Reporting System (DIBRS)* (January 23, 2018) (Incorporating Change 1, June 29, 2018)

Department of Defense Manual 7730.47-M, Volume 1, *Defense Incident-Based Reporting System (DIBRS): Data Segments and Elements* (December 7, 2010) (Incorporating Change 2, June 29, 2018)

#### **d. Military Services**

U.S. Coast Guard, Commandant Instruction M1754.10E, *Coast Guard Investigation Service Roles and Responsibilities* (December 2016)

#### **4. Meetings and Hearings**

##### **a. Public Meetings of the DAC-IPAD**

Transcript of DAC-IPAD Public Meeting (January 19, 2017)

Transcript of DAC-IPAD Public Meeting (April 28, 2017)

Transcript of DAC-IPAD Public Meeting (October 20, 2017)

Transcript of DAC-IPAD Public Meeting (April 20, 2018)

Transcript of DAC-IPAD Public Meeting (October 19, 2018)

##### **b. Public Meeting of the Response Systems to Adult Sexual Assault Crimes Panel**

Transcript of Response Systems Panel Public Meeting (May 29, 2014)

##### **c. Preparatory Sessions of the DAC-IPAD Working Groups**

Transcript of the DAC-IPAD Case Review Working Group Preparatory Session (March 6, 2018)

Transcript of the DAC-IPAD Case Review Working Group Preparatory Session (July 19, 2018)

Transcript of the DAC-IPAD Case Review Working Group Staff Preparatory Session (July 25, 2018)

Transcript of the DAC-IPAD Case Review Working Group Preparatory Session (August 23, 2018)

Transcript of the DAC-IPAD Policy Working Group Preparatory Session (December 1, 2017)

Transcript of the DAC-IPAD Policy Working Group Preparatory Session (May 24, 2018)

#### **5. Committee Member Submissions**

Letter from Ms. Martha S. Bashford, Chair, DAC-IPAD, to the Secretary of Defense (September 13, 2018)

#### **6. Military and Civilian Federal Policy**

##### **a. Department of Defense**

Memorandum from Secretary of Defense to Secretaries of Military Departments et al., subject: Withholding Initial Disposition Authority Under the Uniform Code of Military Justice in Certain Sexual Assault Cases (April 20, 2012)

Memorandum from Secretary of Defense to Secretaries of Military Departments et al., subject: Comprehensive Review of the Uniform Code of Military Justice (October 18, 2013)

Memorandum from Secretary of Defense to Secretaries of Military Departments et al., subject: Exception to Policy Allowing the Military Services the Option to Provide Expedited Transfers to Adult Sexual Assault Victim Who File Restricted Reports (October 21, 2015)

**b. Military Services**

Chief National Guard Bureau Instruction 1303.01A, *Expedited Transfer, Reassignment, or Removal of National Guard Members Due to an Unrestricted Report of Sexual Assault* (August 6, 2014)

Memorandum of Agreement Between the Office of the Judge Advocate General and the U.S. Army Criminal Investigation Command (CID), Legal Coordination for CID Law Enforcement Reports (June 5, 2018)

**c. Department of Justice**

U.S. Department of Justice, Federal Bureau of Investigation, *Uniform Crime Reporting Handbook, National Incident-Based Reporting System, Volume 1: Data Collection Guidelines* (2000)

U.S. Department of Justice, Federal Bureau of Investigation, *Criminal Justice Information Services (CJIS) Division Uniform Crime Reporting (UCR) Program, Summary Reporting System (SRS) User Manual* (2013)

U.S. Department of Justice, Federal Bureau of Investigation, *Guidelines for Preparation of Fingerprint Cards and Associated Criminal History Information* (September 30, 2016)

**7. Official Reports**

**a. DoD and DoD Agencies**

Department of Defense, Office of Inspector General, Report No. *DODIG-2016-088, Evaluation of the Separation of Service Members Who Made a Report of Sexual Assault* (May 9, 2016)

Department of Defense, Office of Inspector General, Report No. *DODIG-2018-035, Evaluation of Fingerprint Card and Final Disposition Report Submissions by Military Service Law Enforcement Organizations* (December 4, 2017)

Department of Defense, Office of Inspector General, Report No. *DODIG 2019-030, Report of Investigation into the United States Air Force's Failure to Submit Devin Kelly's Criminal History Information to the Federal Bureau of Investigation* (December 6, 2018)

Department of Defense, Sexual Assault Prevention and Response Office, *Department of Defense Annual Report on Sexual Assault in the Military: Fiscal Year 2016* (May 1, 2017)

Department of Defense, Sexual Assault Prevention and Response Office, *Department of Defense Annual Report on Sexual Assault in the Military: Fiscal Year 2017* (April 27, 2018)

Department of Defense, *Report on Review of Resourcing of Trial Defense Services Organizations* (June 2018)

Military Justice Review Group, *Report of the Military Justice Review Group, Part I: UCMJ Recommendations* (December 22, 2015)

**b. Response Systems to Adult Sexual Assault Crimes Panel**

Response Systems Panel, *Report of the Response Systems to Adult Sexual Assault Crimes Panel* (June 2014)

**c. Judicial Proceedings Panel**

Judicial Proceedings Panel, *Report on Statistical Data Regarding Military Adjudication of Sexual Assault Offenses* (April 2016)

Judicial Proceedings Panel, *Report on Statistical Data Regarding Military Adjudication of Sexual Assault Offenses for Fiscal Year 2015* (September 2017)

Judicial Proceedings Panel, *Report on Panel Concerns Regarding the Fair Administration of Military Justice in Sexual Assault Cases* (September 2017)

**d. Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces Reports**

Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces, *Initial Report* (March 2017)

Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces, *Annual Report* (March 2018)

**8. DAC-IPAD Requests for Information and Responses**

DAC-IPAD Request for Information Set 4 (September 11, 2017)

DAC-IPAD Request for Information Set 5 (October 30, 2017)

Military Services' Responses to DAC-IPAD Request for Information Set 4 (September 11, 2017)

Military Services' Responses to DAC-IPAD Request for Information Set 5 (October 30, 2017)

**9. News Articles**

Ilke Cole, "Air Force's First Invisible Wounds Center Opens," Defense Visual Information Distribution Service (September 4, 2018)

Robert Draper, "The Military's Rough Justice on Sexual Assault," *New York Times* (November 26, 2014)

Craig Whitlock, "How the Military Handles Sexual Assault Behind Closed Doors," *Washington Post* (September 30, 2017)

**10. Letters and Emails**

Written Remarks to the DAC-IPAD from Mr. Glenn Schmitt, Director, Office of Research and Data, United States Sentencing Commission (April 20, 2017)

Memorandum from Mr. William Castle, Acting General Counsel for the Department of Defense, to the DAC-IPAD Chair Martha S. Bashford (June 7, 2018)

Email from Steven A. Knight, Chief, Investigative Policy, Office of Inspector General, Department of Defense, to Jan Chayt, DAC-IPAD Investigator (December 17, 2018)

### **11. Internet Resources and Other Media**

Department of Defense Joint Service Committee on Military Justice, Current Publications, as of February 22, 2019: <https://jsc.defense.gov/Military-Law/Current-Publications-and-Updates/>

Federal Bureau of Investigation, "Arrest Disposition Submission," as of February 22, 2019: <https://www.fbi.gov/services/cjis/fingerprints-and-other-biometrics/arrest-disposition-submission>

*The Invisible War* (Chain Camera Pictures 2012)

Military OneSource, "Demographic Profiles," as of February 22, 2019: <http://www.militaryonesource.mil//mos/reports-and-surveys>

"You Have Options Program: Sexual Assault Reporting," as of February 22, 2019: <https://www.reportingoptions.org>



